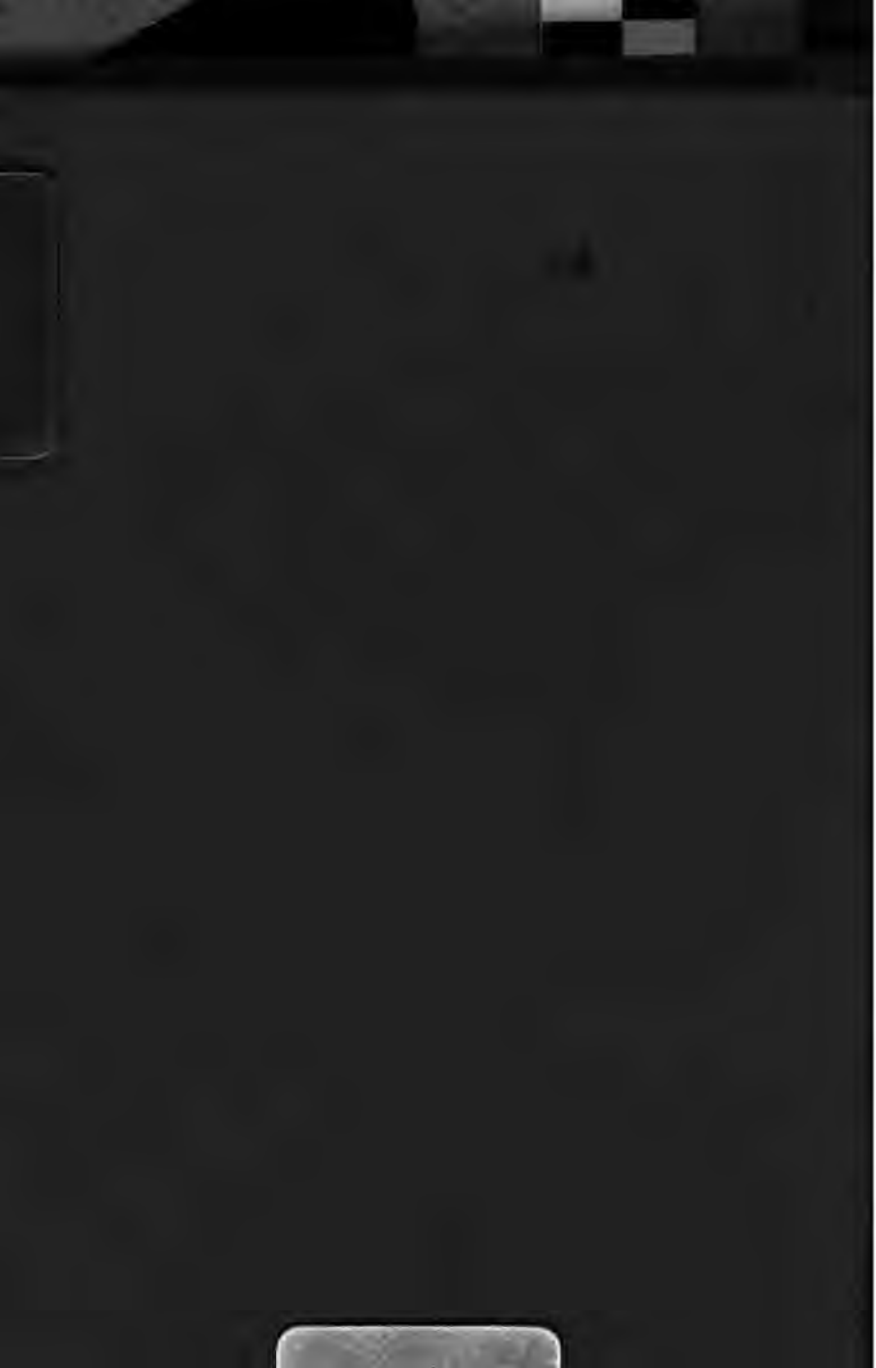
ARBITRATIONS.

BY

B. FLETCHER



ARBITRATIONS:

A

TEXT-BOOK FOR SURVEYORS,

IN TABULATED FORM.

BY

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PREFACE.

THE kind and gratifying reception accorded to my previous handy-books on 'Dilapidations,' and 'Compensations,' has encouraged me to further labours in the same field, of which the present volume is the outcome.

The bulk of the information afforded has been already before the public in the columns of a weekly journal, but has been entirely re-arranged and considerably added to.

Having spared no pains to make my little work a complete and thoroughly reliable book of reference on the subject of which it treats, I have drawn largely on the best authorities, amongst which I gladly acknowledge my obligations to Mr. Francis Russell's most valuable work; and trust I have succeeded in producing a volume which will worthily supply an undoubted need.

BANISTER FLETCHER.

32, POULTRY, E.C.,
January, 1875.

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THE present might, I think, with great propriety, be termed "the Age of Arbitration." The recommendations of the principle are such that we find it every day more generally adopted as the means of settlement of every class of difference, from the "burning questions" of international importance, to the dispute as to the halfpenny per hour, more or less, in the wages of the artisan.

And in the operations of no calling has the spread of this system been wider or more rapid than in those of the architect and surveyor. This being so, the questions will arise, "What has the architectural profession done to educate or to qualify its members for the parts they are likely to be called upon to perform? What works have eminent members of the profession contributed to the literature of the

subject, or what public discussions have taken place for the mutual interchange of ideas?" I fear the answers to these questions would be unsatisfactory indeed. I know of no work that can be in any way considered as a text-book on the subject. Legal works there are, of great authority and value, but none treating the matter in a simple and practical way, or looking at it, in point of fact, rather from the surveyor's than from the lawyer's point of view. As to discussion, I think the first attempt to bring the subject before our profession in that form was made by myself in a paper read before the Royal Institute of British Architects, in January, 1873. Of course, within the compass of a paper it is only possible to touch, and that but slightly, upon the leading points of a topic, and I did not profess to do more. My principal object was to show the advantages which would accrue to the public from the employment of properly trained surveyors as arbitrators in technical matters, and the probability that this branch of practice would nevertheless fall entirely into the hands of our legal friends, unless our profession bestirred itself to provide for its own members means of obtaining the training necessary to enable them to cope with lawyers on more equal terms. In the result, as some of my readers may be aware, a motion, recommending the establishment of a professional tribunal, was proposed by Mr. J. E. Saunders, supported by Professor Kerr, and carried.

It is in the hope of supplying this want of some volume, containing in a simple and easily accessible form useful information as to the duties of arbitrators and the conduct of arbitrations, that I have prepared this book, in which I have, where it has seemed advantageous, continued that system of "tabulated" information, which formed a novel feature in my works on 'Dilapidations,' and 'Compensations,' and which I am pleased to find has been so generally approved.

In order to assist the reader in arriving at a clear understanding of our subject, I propose to consider, first, the modes

in which arbitrations may arise. These may be divided into three classes:—

By order of a judge, or of the Court, before or in the course of trial.

Under one of the especial Acts of Parliament which provide for the settlement by arbitration of disputes arising under them.

By consent of the parties.

Nothing is more common in an action involving technical questions, after the judge, jury, witnesses, counsel, and solicitors are assembled, the pleadings opened, and the first few introductory sentences spoken by the counsel for the plaintiff, than for the judge to suggest that it is really a matter for arbitration. Usually, after this expression of opinion from the Bench, the case is at once referred, and the arbitrator not unfrequently nominated by the judge; and in this case, I need hardly say, the gentleman nominated is invariably a barrister.

A reference may also arise under an order made by a judge at Chambers, on the application and by consent of the opposing parties, without going to trial.

The principal Acts which make special provision for arbitration in the event of dispute, are—

The Lands Clauses Consolidation Act, 1845.
The Railways Clauses Consolidation Act, 1845.
The Railway Companies Arbitration Act, 1859.
The Companies Clauses Consolidation Act, 1845.
The Public Health Act, 1848.
The Metropolitan Buildings Act, 1855.

The nature of the provisions in the first five of these may be shortly stated to be that, if a party interested in property proposed to be affected by any undertaking shall signify to the promoters thereof a desire to have the compensation settled by arbitration, it shall be so settled. Such desire must be signified by notice in writing before the promoters have issued their warrant to the sheriff for the summoning of a jury, and must state the interest in respect of which

compensation is claimed, and the amount of the claim. The Metropolitan Buildings Act makes special provision for the settlement of disputes between building and adjoining owners by arbitration, and in these cases the arbitrator cannot be other than a surveyor.

The third (and certainly in my opinion the best) mode in which arbitrations may arise, is by consent of the parties. I say, advisedly, the best mode, because hereby is saved all the enormous cost of preparing for trial; which, if, as is probable, the case is after all referred, is entirely thrown away. It must, therefore, be advantageous to agree at the outset to settle any differences by arbitration.

A very remarkable point in connection with arbitrations is one the reason or justice of which I confess I do not comprehend. It is that neither at law nor in equity can the fact that an arbitration is pending be pleaded as a bar to an action or suit for the same demand, and this even though the submission be made a rule of a court of common law. The exceptions are, when there is a covenant not to sue (which will suffice to stay proceedings in equity); or, when there is an agreement that "in consideration of the defendant consenting to refer matters in dispute in an action, the plaintiff will accept such agreement in satisfaction of all damage in respect of certain *other matters*, and a reference thereon." This may be pleaded as satisfaction to an action in respect of the last-mentioned matters.

If, however, the submission contain an express stipulation that no action shall be brought, the Court will, on application, stay proceedings in any action commenced contrary to such stipulation.

Under the Railway Companies Arbitration Act, 1859 (22 & 33 Vict., c. 59), an agreement to refer between two companies may be pleaded as a bar to a suit.

I think the portion of our subject which it will be convenient to consider next is: "What matters are those which

are most likely to be submitted to arbitration," and here the tabulated form may be advantageously adopted.

TABLE I.

Matters for Submission to Arbitration.

Compensation for interests taken for, or affected by, works done under special Acts of Parliament, viz.:—

- Enclosing of commons.
- Rights of common.
- Allotment of lands.
- Setting out public roads.
- Commutation of tithes.
- Definition of boundaries.
- Markets.
- Harbours.
- Docks.
- Piers.
- Waterworks.
- Town improvements.
- Cemeteries.
- Drainage works.
- Railways, whether executed or abandoned.

Compensation for interests taken for, or affected by, works executed by a private individual, or by a company; but not under special Act of Parliament.

Compensation for dilapidations.

Among matters which may be agreed to be referred are also any "future differences" which may arise between parties, though none at present exist. Thus, parties may give the arbitrator power to determine on contingent claims, or on matters in dispute, or demands arising after the date of submission.

No difference can be referred to arbitration, the subject-matter whereof is illegal. Perhaps it would be more correct to say, if referred to arbitration, no award made on any such matter would "hold."

We may refer to arbitration a claim for compensation where property has been injuriously affected by the works of a railway, though the railway may have been abandoned.

Amongst matters which may be referred to arbitration,

and, indeed, for the settlement of which by that means, advantages are afforded by special enactments, are disputes between masters and workmen; but these are cases which will rarely concern the surveyor.

The next point useful to consider will be, "Who may refer;" and here another Table may be given.

TABLE II.

Who may refer.

Anyone capable of making a disposition or release of his right.
Anyone who can contract.*
(It must, however, be remembered that charities must have the consent of the Attorney-General.)
Femmes sole.
An agent (if authorized).
(The principal alone will be bound, unless the agent expressly bind himself for the performance of his principal.)
Assignees of bankrupts, by consent of creditors.
Attorneys and solicitors.
Counsel.
Executors and administrators.
Trustees.
Committee (or if no committee, the wife) of a lunatic—by permission of the Court of Chancery.
Officer of a public company.

Amongst the parties to a reference may sometimes be included a "third party." It would appear that even if not made a party to the reference, the consent of an individual to the proceedings will, in many cases, preclude him from disputing his obligations to abide by the award. A third party may be added after the reference has commenced, and the arbitration may proceed as if all three parties had been in the original order of reference.

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* If a partner submit for himself and partner, it only binds himself; and further, should his partner refuse to agree, the breach of submission to the award rests with the partner who signed. The other partner is considered a stranger to the award. It must also be remembered that power to sue does not confer power to refer.

I would here mention a peculiar case, showing how acquiescence may render a third person bound by an award. The landlords of two adjoining estates, let on lease, referred to a surveyor to determine and stake out a disputed boundary between the two properties. The tenant of one of the estates, who, though not a party to the reference, by his conduct assented to the staking out of the line by the arbitrating surveyor, was held bound by the decision as if he had been an original party to the submission. (Taylor *v.* Parry, 1 M. and G., 604.)

It should be noted that the acts of an attorney's town agent are as binding on a client as those of the attorney himself. This is not so with the acts of a confidential clerk. An attorney's consent to a judge's order referring a cause being made a rule of Court as to an enlargement of time, is binding on his client. Indeed no consent is necessary on the part of the client. If the attorney consent for time on any point, it is enough.

A bankrupt, by submitting to a reference, binds himself, but not his estate.

Savings banks, friendly societies, and benefit building societies, appear to be bound to refer all matters of dispute, having no other remedy under the statute.

CHAPTER II.

OF THE SUBMISSION — NO FORM NECESSARY — PARTIES MUST INTEND TO BE BOUND BY DECISION — VERBAL SUBMISSION — SUBMISSION IN WRITING — SEALING — STAMPING — ALTERATION — SUBMISSION BY BOND — SUBMISSION BY DEED — SUBMISSION MUST INCLUDE ALL MATTERS TO BE REFERRED — COMMON FORM OF SUBMISSION — IMPORTANCE OF SUBMISSION — REFERENCE ON "USUAL TERMS" — SUBMISSION MUST REFER TO SAME MATTERS IN MIND OF EACH PARTY — SHOULD BE LEFT WITH ARBITRATOR — COURTS CANNOT AMEND AGREEMENT OF REFERENCE — CONSEQUENCE OF ERROR IN DRAWING SAME.

WE have now seen what matters may be submitted to arbitration, and a goodly list they make; but I venture to think it is not nearly so large as it will be in a few years' time. We have also seen who are the parties who may refer, and have now to consider what is a "submission."

The submission is the necessary agreement by which the parties agree to submit their differences to the decision of an arbitrator, and the legal authorities state it may be made "in any manner that expresses the agreement of the parties to be bound by the decision of the person chosen to determine the matter in controversy." Thus, no formal submission is absolutely necessary, though it is of course usual. But it would appear to be absolutely necessary that the parties "intend to be concluded by the decision of the person called in," in order to clothe him with the authority of an arbitrator.

It will be seen from the foregoing remarks that the submission may even be parol, or verbal, but it is much better that it should be in writing. When in writing it is not necessary it should be under seal, but it must be stamped with the ordinary (6*d.*) agreement stamp. Any alteration in the document, or any fresh document changing the arbitrator or extending the time, will require a fresh stamp of the same

value, being considered by the law equivalent to a fresh submission.

Another form of submission is by "bond," under which each party executes a bond to the other in a certain penalty, subject to the condition of his abiding by the award of the arbitrator. The penalty in the bond does not limit the amount the arbitrator may award; though if he exceed that limit, no larger sum than the penalty can be recovered by action on the bond. The submission of the parties is contained in the conditions of the mutual bonds, for they together make up one agreement of reference. The terms of the conditions may be altered by an instrument under seal, without affecting the bond. A submission by bond requires a bond stamp only.

There is also a third form of submission; that by deed, or indenture; and this cannot be altered by parol or by written agreement, even when indorsed upon it.

Submissions by rule of Court, by judge's order, or by order of Nisi Prius, do not now require a stamp, the 5 Geo. IV., c. 41, having taken the duty off law proceedings.

The precise character of a submission will be best explained by giving, *in extenso*, a form commonly in use. It should be particularly observed that the submission must include and specify all the matters intended to be referred to the arbitrator, as he has no power to deal with any matters not so specified. Indeed, his doing so would in a majority of cases, as will be hereafter explained, altogether invalidate his award.

Form of Submission.

1. Memorandum of agreement made this day of , 18 , between A. B., of , and C. D., of .

2. Whereas disputes and differences have arisen, and are still subsisting between the above-mentioned parties, as to [*here state the matter in dispute*], it is hereby agreed by and between them to refer all disputes and matters in difference whatsoever between them,

3. To the award, order, and final determination of E. F., of .

4. So as the above-mentioned arbitrator make and publish his award in writing, and signed by him, of and concerning the matters referred, eady to be delivered to the parties or both of them.

5. Or if they, or either of them, shall be dead before the making of the award, to their respective personal representatives who shall require the same.

6. On or before the day of , or on or before any other day, to which the arbitrator shall, by any writing signed by him, indorsed on this submission, from time to time enlarge the time for making his award.

7. And it is further agreed, that the cost of preparing and executing these presents and a duplicate thereof, and the costs of the reference and award, shall be in the discretion of the arbitrator, who may direct to, and by whom, and in what manner, the same or any part thereof shall be paid.

8. And it is further agreed, that this submission may be made a rule of the Court of Queen's Bench, Common Pleas, Exchequer, or Chancery, as the case may be, at the instance of either the said A. B., or the said C. D., his executors or administrators, without any notice to the other of them.

9. And it is further agreed, that the arbitrator shall be at liberty to alter and determine, what he shall think fit to be done by either of the parties respecting the matter referred.

10. And that the witnesses or the reference, and the parties (if examined) shall be examined on oath.

11. And that the arbitrator shall be at liberty to proceed *ex parte*, in case either party, after reasonable notice, shall at any time neglect or refuse to attend on the reference, without having previously shown to the said arbitrator what the latter shall consider good and sufficient cause for omitting to attend.

12. And that the parties respectively shall produce before the arbitrator all books, deeds, papers, accounts, vouchers, writings, and documents within their possession or control, which the arbitrator may require and call for, as in his judgment relating to the matters referred.

13. And that the parties respectively shall do all other acts necessary to enable the arbitrator to make a just award; and that neither of them shall wilfully or wrongfully do, or cause to be done, any act to delay or prevent the arbitrator from making his award.

14. And it is further agreed, that the said parties, their executors and administrators, shall, on their respective parts, in all things stand to, obey, abide by, perform, fulfil and keep the award so to be made and published as aforesaid.

15. And that none of them shall bring, or prosecute any writ of error, or any action, or suit at law or in equity, against the arbitrator, or against any other of them concerning the matters referred.

16. And it is further agreed, that in the event of either of the parties, their executors or administrators, being dissatisfied with the award, or disputing its validity, and moving the Court to set the same, or any part

thereof, aside, or on any motion being made respecting the said award, the said Court, whether the award be insufficient in law or not, shall have power, if it shall think fit, to remit the award, or the matters hereby referred, or any of them, from time to time, to the re-consideration and determination of the said arbitrator.

17. In witness whereof the said parties have hereunto set their hands the day and year first above written.

Witness

I cannot too strongly impress upon my readers the importance of the submission, being, as it is, the sole instrument that invests the arbitrator with authority, and the foundation of all his proceedings.

The expression, "a reference on the usual terms," is one so often met with, that it will be well to explain what is meant thereby before proceeding further with our subject. The "usual terms" are:—

That the arbitrator shall decide for the plaintiff or the defendant; if for the plaintiff, that he shall assess the amount of the damages, which, however, cannot exceed the amount claimed.'

The costs of the cause follow his decision. He may award the costs of the reference in any way he pleases.

He has unlimited time for making his award. In practice, however, it is usual to fix a time, giving the arbitrator power to enlarge it if he consider it necessary to do so.

The death of either party does not abate his authority.

He has power to amend the record.

All evidence must be taken on oath.

The parties must produce all documents relating to the matters in question.

The parties are bound to obey his award, and not to bring any action or other legal proceedings respecting the matters referred, either against the arbitrator or each other.

They consent, further, that if either of them wilfully prevent the arbitrator from making the award, he will pay to the other such costs as the Court may think fit.

That if either party dispute the validity of the award, the Court may refer the matters, or any of them, back to the arbitrator for re-consideration.

Lastly, they consent that the order itself may be made a rule of Court, and by this the parties are bound by all the provisions of the Common Law Procedure Act, 1854. This Act gives either party power to compel the other to name arbitrator, &c.

A very useful clause, which, though sometimes inserted, does not properly belong to the "usual terms," is one giving to the arbitrator power to direct what he shall think fit to be done by the parties respecting the matters referred, as in Clause 9 of the Form of Submission above given.

Whether the submission be parol, or by agreement, deed, or in whatever manner, it is of the highest importance that the same matter should be referred to by both parties, and hence the desirability that the submission should not only be in writing, but that it should be in one document, signed by both or all parties. Should the submission relate, in the mind of one of the parties, to one matter, or one phase of a dispute, and to another in the mind of the other party, not only will the inconvenience arise that the decision will relate to a matter which one of the parties never intended to refer, but, if it can be shown that the parties intended to refer different matters, the award will be altogether invalid. I have in my mind a case where one party appointed an arbitrator to determine a dispute respecting the construction of a lease and the damages sustained, while the other in his appointment alluded only to the construction of the lease, and omitted all mention of the damages; in consequence, the whole award was void.

The submission should be left with the arbitrator, as it is the document which gives him his authority and defines his powers, and he also requires it from time to time for the purpose of making necessary indorsements.

It seems curious that, powerful as the Courts are to upset or set aside awards, they have scarcely any power—in fact, are powerless—to amend an agreement of reference, even though it is only desired to make it accord with the original intentions of the parties. I am not here alluding to clerical errors, or to an immaterial variance in orders of reference, as such matters (and such only) the Courts have power to amend. For the rectification of any other error the only course is the tedious and doubtful one of a bill in Chancery. To show to what an extent the inconvenience (I had almost

written injustice) arising from these legal incongruities may go, I will quote a case (Rawtree *v.* King, 5 Moore, 167). There, by mistake, the Court's own officer, the associate, drew up an order referring "all matters in difference between the parties," and not "all matters in difference in the cause." The Court held it could not interfere; that the order of reference must be treated as a nullity, and that the cause must go to a new trial! I quote this fully, and think it wise for all to reflect thereon. Can legal acumen (!) go much farther? The case was most simple. Both parties agreed to refer the cause of action. The associate, I believe, often draws up the form. He is entirely disinterested (and therefore, perhaps, a little careless); uses the wrong language, and the result is the nullity of an expensive arbitration. Of course, this is not justice, and the setting aside of the award can delight only the highly-trained legal mind, while, I am afraid, it must disgust the intelligent, common-sense lay public.

CHAPTER III.

OF REVOCATION — FORMERLY, MIGHT BE MADE BY EITHER PARTY WITHOUT LEAVE — REASON — CONSEQUENT INCONVENIENCE — IN CERTAIN CASES LEAVE OF COURT MUST NOW BE OBTAINED — REVOCATION WHEN SUBMISSION UNDER SEAL — PENALTY OF REVOCATION — REVOCATION BY DEATH OF PARTY — REVOCATION BY DEATH OF ARBITRATOR — REVOCATION BY BANKRUPTCY OR INSOLVENCY — REVOCATION BY MARRIAGE OF FEMME SOLE.

HAVING now explained the various methods by which a matter may be submitted to arbitration, it will be well to consider how such submission, when made, may be *revoked.*

It appears that prior to the passing of the 3 & 4 Will. IV., c. 42, the authority of the arbitrator might be revoked at any time before the award was made, at the pleasure of any party to the submission, whether the submission was by agreement in writing, by bond, by deed, by judge's order, by order of Nisi Prius, or by rule of Court, and notwithstanding it was made irrevocable by the express words of the submission. The reason of this was that nothing of less power than legislative enactment could make that irrevocable which was, in the very nature of things, revocable, as the arbitrator being appointed by the consent of the parties to act for them, could no longer act when that consent was withdrawn, and any award made consequent to a revocation was therefore a nullity. Either of two parties to a submission, or, if there were several, any one of them, could, by revoking the authority of the arbitrator, render the submission void as to all, even against the will of his co-plaintiffs or co-defendants.

Great inconvenience and injustice having, however, frequently arisen from this state of affairs, it was enacted by Section 39 of the above-mentioned Act (3 & 4 Will. IV., c. 42) that

> "The power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of Court or judge's order, or order of Nisi Prius, in any action now brought, or which shall hereafter be brought, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of His Majesty's courts of record, shall not be revocable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a judge; and the arbitrator or umpire shall, and may, and is hereby required to, proceed with the reference, notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference."

But it must be noticed that the case must come clearly under one of the heads mentioned in the above extract, to deprive the parties of their common law power of revocation without leave. Thus, it is doubtful whether a submission by order of equity does not remain revocable.

It is not clearly determined, though it appears to be the better opinion, that a revocation of a submission under seal must itself be under seal. It must, however, be remembered that any party revoking a submission renders himself liable to an action for so doing.

The revocation of a submission may also occur by the death of one of the parties during the reference; by the death, or refusal to act, of the arbitrator; by the bankruptcy or insolvency of one of the parties; and, in the case of a lady who was *femme sole* at the time of her becoming a party to the submission, by her marriage during the reference.

Where there are several parties on the same side, however, the death of one of them will not always revoke the submission. And the revocation of a submission from this

cause may be, and now very frequently is, avoided by the introduction of a clause to this effect:—

> "That the award is to be delivered to the parties, or either of them, or if either of them should be dead before the making of the award, to their respective personal representatives requiring the same."

Prior to the Common Law Procedure Act, 1854 (17 & 18 Vict., c. 125), the death of the arbitrator of necessity revoked the submission. By that Act, however, in case of the death, refusal to act, or incapacity, of a single arbitrator, a judge may appoint a new one if the parties do not; and by Section 13, where one of two arbitrators fails for the like causes, unless the parties appointing him appoint a fresh arbitrator, the remaining arbitrator may be appointed to act alone.

The bankruptcy or insolvency of one party to a submission does not of itself amount to a revocation, but is held by the judge to be a good ground for assenting to a revocation on the application of the other side.

The marriage of a woman, party to a submission, revokes the arbitrator's authority, and needs no notice to him to make the revocation complete as to the whole of the parties concerned. Being a voluntary act, however, it appears clear that the marriage renders her and her husband liable to an action for breach of her agreement to abide by and perform the award.

CHAPTER IV.

WHO MAY BE ARBITRATOR — CLASS SOMETIMES SPECIFIED BY STATUTE — MASTERS AND WORKMEN — WHY BARRISTERS USUALLY APPOINTED — LIABILITY OF AWARD BY LAY ARBITRATOR TO BE SET ASIDE — QUALIFICATIONS OF ARBITRATOR — MUST BE INDIFFERENT — LUNATICS AND INFANTS — DEBTOR OR CREDITOR OF PARTY — SECRET INTEREST — BAD FEELING — BIAS OR PREJUDICE — PRIVATE ARRANGEMENT — ARBITRATOR MUST BE INCORRUPT — BUYING UP CLAIMS — ARCHITECT AS ARBITRATOR BETWEEN BUILDER AND CLIENT — ARBITRATOR IN OWN CASE — TABLE III. — METHOD OF APPOINTMENT — REGULATED BY SUBMISSION — ACCEPTANCE NECESSARY TO PERFECT APPOINTMENT — WHERE ARBITRATORS AND UMPIRE EMPLOYED, FORMER CANNOT ACT UNTIL LATTER APPOINTED — MUST NOT BE CHOSEN BY TOSSING-UP — VERBAL APPOINTMENT — STAMPING APPOINTMENT — RULES FOR GUIDANCE OF ARBITRATOR — MUST ENDEAVOUR TO DO AS TRIBUNAL WOULD HAVE DONE — MUST LOOK CAREFULLY TO SUBMISSION — ARBITRATOR NOT ALWAYS BOUND BY STRICT RULES OF PRACTICE — MAY ALLOW INTEREST — MAY EVEN DISREGARD THE STRICT LAW — LIMITS OF TIME FOR ADMISSION OF MATTERS — CLAIMS ARISING AFTER DATE OF WRIT — EXAMPLES — DURATION OF ARBITRATION — AWARD MAY BE MADE ON DATE OF SUBMISSION — TIME ALLOWED UNDER COMMON LAW PROCEDURE ACT — HOW TIME MAY BE EXTENDED — WHERE TWO ARBITRATORS AND UMPIRE, DUTY OF LATTER IF FORMER DO NOT AWARD WITHIN PROPER TIME — WHERE COMMON LAW PROCEDURE ACT DOES NOT APPLY ARBITRATOR'S AUTHORITY WILL CONTINUE FOR LIFE IF NOT REVOKED — ARBITRATOR CANNOT FIX LIMIT UNLESS EMPOWERED BY SUBMISSION — DEFINITIONS OF EXPRESSIONS "WITHIN," "UNTIL," AND "MONTHS" — BY LANDS CLAUSES CONSOLIDATION ACT TWO ARBITRATORS MUST AWARD WITHIN TWENTY-ONE DAYS — OF ENLARGEMENT — ARBITRATOR CANNOT EXTEND TIME NAMED UNLESS UNDER SPECIAL POWER — FORM OF ENLARGEMENT — WHEN ARBITRATOR NOT LIMITED TO ONE ENLARGEMENT — UNDER LANDS CLAUSES CONSOLIDATION ACT TWO ARBITRATORS MAY ENLARGE TIME TO THREE MONTHS — EXTENSION BY CONSENT — CONDUCT AMOUNTING TO CONSENT — CONSENT IN WRITING REQUIRES STAMP — HOW CONSENT SHOULD BE MADE — ATTENDANCES WHEN NO PROPER ENLARGEMENT — POWER OF COURTS TO ENLARGE TIME — DIFFERENCE BETWEEN SAME AND THAT OF ARBITRATOR — TABLE IV. — ARBITRATOR'S POWERS AS TO LIMITS OF ARBITRATION.

WE now approach, perhaps, the most important part of our subject, viz.—the consideration of who may be an arbitrator, the method of his appointment, his duties and qualifications, and the principles which should guide him.

Sometimes the class from which the arbitrator for settling particular disputes should be selected, is indicated by statute, as under 5 Geo. IV., c. 96, by which it is enacted that the referee for settling, by arbitration, disputes between masters and workmen, is to be a justice of the peace, if the parties can agree on one; if not, there are to be two arbitrators, one a master, or the agent or foreman of a master, and the other a workman in the calling respecting which the dispute has arisen.

I alluded in a former chapter to the subject of disputes between masters and workmen, saying that though by special Acts they were made subjects for arbitration, they were not likely much to concern the surveyor. Here, again, it would almost seem that, from the apathy of the profession, or from some other cause which it would surely be worth while to try to discover, a class of work for which, in certain cases, no one should be so qualified as the surveyor, had fallen into other hands. In the numerous, frequent, and lamentable contests between labour and capital, to which no callings are more subject than the building trades, who so fit a person to hold the scales of justice as the surveyor—the man who, acquainted with the nature of the interests involved, the class of parties concerned, the qualifications called into requirement, the nature and value of the services rendered, is yet a partisan to neither side, though a friend to both? The ever-raging warfare between the two great elements in the economy of our commercial system might, and indeed does, form a fruitful subject for the essays of the philosopher. Even Mr. Disraeli has his pet theory on the matter, attributing the discord which is continually making itself apparent by "strikes," to, I believe, the depreciation in value of gold. With such abstract theories we have nothing to do, but with the practical and business portion of the subject the architect and surveyor is intimately concerned. In his own proper person he is one of the chief sufferers by the stagnation which is ever and anon caused by a "difference" between the operatives in some particular de-

partment of the building trades and their employers. In the inconvenience occasioned, not only to himself, but to his clients, by the occurrence of a strike during the progress of building operations under his superintendence, he is again made aware of his interest in the dispute. And this being so, why, I ask, should not the architect, having so close a connection with the matters in difference, accustomed, as he is, to act as arbitrator between clients and contractors, and accustomed, too, as he is (or should be), to weigh the evidence and facts, and form an impartial opinion thereupon, be the person customarily selected as arbitrator in such disputes?

The difficulties of the position must not be overlooked nor lightly estimated, for there is one grand distinction between awards given in disputes of this character and those of arbitrators appointed to decide an action-at-law. This is, that, in the latter case the award can be enforced, but in the former there is no guarantee beyond the good sense and honourable feeling of the parties, that they will abide by the arbitrator's decision. He is therefore in this truly dignified but difficult position, that he must convince both sides of the justice of his decision, to secure for his award respect and obedience. Truly this is a glorious responsibility, and happy the man that can rise to the greatness of the occasion. Patience, clear-headedness, impartiality, the dignified maintenance of due authority — all must be called into play. Great is the difficulty, heavy the responsibility, but glorious the reward.

While on the subject of "Who may be an arbitrator," it may not be inappropriate to offer a few reflections as to why barristers are so universally selected to fill the post of arbitrator in cases involving surveying and other technical questions. No doubt the one great advantage they possess is that they are, from their training, adepts at the conduct of an inquiry, and acquainted with the laws which should govern the receiving or rejecting of evidence. But these

are qualifications which study and observation will impart equally to the surveyor, who posseses over the barrister the immense advantage of a technical knowledge, which is the result not only of much study, but of long experience, which the legal gentleman of course cannot have, and it is therefore that I would endeavour to incite the members (especially the younger ones) of my profession to apply themselves to the attainment of those qualifications which, added to their own peculiar knowledge, should make them much better fitted than any mere lawyer to act as arbitrators in cases bearing on their own profession. While admitting the very great talent to be found at the bar, still, judging from the statements of barrister-friends of my own, I think it would be generally admitted, even amongst lawyers, that they cannot decide on technical matters so readily or so well as an expert.

For an answer to the question why judges now so generally prefer appointing a legal arbitrator, it is not far to seek. Apart from the natural *esprit de corps* which would induce the giving of dignified and remunerative employment to a brother professional, it is, as a gentleman occupying a prominent position at the bar told me some time ago, that the judge feels an arbitration so conducted will end the matter; whereas there is every probability that the award of a technical arbitrator, as at present qualified, would be upset by the dissatisfied party. My friend stated that he did not believe there was more than one award in ten of those made by technical arbitrators which were not overthrown, through some informality or want of legal knowledge.

An arbitrator should be a person who stands indifferent between the parties. He is a person selected by the mutual consent of parties to determine disputes between them, and hence arises the curious point, that even lunatics or infants are not legally disqualified for the office, for every person is at liberty to choose whom he pleases, and if parties prefer to select such an arbitrator, they cannot afterwards

object to the deficiencies of the person they have themselves selected.

Owing a debt to, or being a creditor of, one of the parties does not disqualify a person from filling the post of arbitrator; but if he have any secret interest in the subject in dispute, or any bad feeling towards either party, he is not a proper person to be a judge between them. It appears that if an arbitrator uses any expressions towards either side which indicate a strong bias or prejudice, or shows that he is actuated by any hostile feeling, the award may be set aside; and this may be done even where there is no cause for impeaching the conduct of another arbitrator who has joined in the award.

An arbitrator should not enter into a private agreement ("Chichester *v.* M'Intyre," 1 Dowl. N.S., 460) with a party respecting the subject of reference. In this case the arbitrator arranged that the tenant should lay out a large sum of money upon certain premises, and took into consideration such outlay in his award, though the landlord had no power to enforce the outlay. The decision of the Court on the award was, that, being *bonâ fide*, it was good in law, but objectionable.

An arbitrator must, of course, be incorrupt, and must not take money for his charges from one of the parties without any bill delivered, or before the making of the award. In such a case the award has been set aside. Nor may he buy up the unascertained claim of any party interested; such a proceeding would, as the law authorities say, "corrupt the fountain, and contaminate the award."

It is held, however, that an architect employed by a client to superintend a builder in building his house, may be an arbitrator between his employer and the builder, although his remuneration is a commission on the amount of the builder's charges.

It is an interesting point that a party may even be an arbitrator in his own case, if his opponent agree to his

deciding the dispute, and the Courts will not over-rule his decision, even though it be in his own favour.

In order to set before my readers the essence of the information I endeavour to furnish in as handy a form as possible, I will now give the substance of the foregoing remarks in the form of a Table.

TABLE III.

Qualifications of an Arbitrator.

Should be indifferent between the parties.
Should enter into no private arrangement with anyone respecting the matter in dispute.
Must have no secret interest in the issue.
Must have no bad feeling towards either party.
Must use no expressions indicating bias.
Must be incorrupt.
Must not take money for his charges before award is made.
Must not buy up unascertained claims.
Is not legally disqualified if an infant or a lunatic.
Is not legally disqualified if a debtor or creditor of one of the parties.
Is not legally disqualified from arbitrating in his own case.

The method of appointment of the arbitrator is, as will have been seen, usually regulated by the "submission," which contains a clause referring to his appointment. Where arbitrators are to be named after disputes shall have arisen, if one party says, "I appoint A. as the arbitrator on my behalf pursuant to such-and-such an agreement," this is sufficient. The appointment need not recite or refer to the matter in dispute.

It appears, however, that acceptance of the office by the person nominated is necessary to perfect the appointment. I will here give a hint which may be useful. Where there are to be two arbitrators and an umpire between them, and you are appointed an arbitrator, and have knowledge of the appointment of the arbitrator on the other side, arrange an *early* meeting to settle method of procedure, and especially

to nominate the umpire; for *until* he is appointed, the law holds that no acts of the arbitrators are good. In these cases there is much technicality to be observed; for instance, the appointment of one of the arbitrators is not complete until it has been notified to the other side. You will notice the importance of this, because if (as is very usual) the appointment is to be made by a certain day, it will be *too late*, though the arbitrator be nominated on the appointed day, if information thereof be not given to the other side until the day after.

It is worthy of note that an arbitrator or umpire must not be appointed by the simple (though, perhaps, plebeian) method of "tossing-up;" the Courts having decided that the appointment must be the result of choice, not chance. The same objection will, therefore, of course apply to drawing lots. It is well to know this, as the temptation to seize so short a road out of a difficulty as that presented by the "hazard of the die," is frequently great. It appears, however, that where each party nominated a person who was admitted by the other to be fit and proper, and the selection between the two persons so nominated was made by tossing-up, it was held that the appointment was good. And it is also clear that an appointment by lot may be made good by consent of the parties to the reference, provided they have full knowledge of the circumstances. If the person appointed as umpire refuse to act, the arbitrators may appoint another, and where an umpire has once been properly appointed by the arbitrators, his appointment will in no way be affected by the disapproval of the parties. Where the form of appointment of umpire by the arbitrators is set forth in the submission, no doubt will arise. Where no form is provided, a verbal appointment will hold good, but it is better it should be in writing. It will not require a stamp unless it be under seal and delivered as a deed.

Coming now to the consideration of the principles which should guide an arbitrator in the discharge of the duties

appertaining to his office, we find that the best authorities give as a general rule for his direction that "he should endeavour to arrive at his conclusions upon the same rules and principles as would have actuated the tribunal for which he is substituted." He must also look carefully to the terms of the submission, as the document which confers his powers, and endeavour therefrom to gather the intentions of the parties. Thus, if the submission refer to "all matters in difference" between certain parties, it would be competent for the arbitrator to exercise equitable, as well as strictly legal, powers, as, for instance, to decide according to his opinion of the intention of a certain deed in which there is an error; while if he be called upon to decide only upon the construction of the deed, he would be bound by the actual terms contained therein.

An arbitrator is not always bound by the strict rules of practice adopted in the Courts. Thus, he may allow interest in taking an account between parties, though a well-known rule would prevent this being allowed by the Courts.

It even appears clear that an arbitrator, knowing the law, may, in order to make what he considers to be, under all the circumstances, an equitable decision, absolutely disregard the law, and it will be no objection to his award that in some particular point it is manifestly against law.

As regards the time up to which matters in dispute occurring come under an arbitrator's jurisdiction, it appears that under a submission of "matters in difference in a cause," he is not justified in dealing with a claim arising after the date of the writ, as he can decide upon nothing but what could be recovered in the action. Special provision in the submission, however, may give him jurisdiction over matters occurring subsequent to the commencement of the action, and in cases also where there is no action parties can give an arbitrator power to decide on contingent claims or matters in dispute arising after the date of submission.

A frequent instance of this is where it is left to the arbitrator to decide as to the costs of the reference and award, all of which of course accrue after the date of the submission.

A case worthy of note is one in which a railway company had taken certain lands and held them some years. An arbitrator, appointed to settle the price to be paid, and to direct conveyances, was held entitled to consider all claims for mesne profits up to the time of making his award.

As regards the duration of an arbitration, or the time within which the award must be made, where the submission states no time, it appears that the arbitrator may, if he so please, and if the circumstances permit of his doing so, make his award on the very day on which the submission is executed; while, on the other hand, under the Common Law Procedure Act, 1854, s. 15, an arbitrator must (unless the document or order conferring his authority specify a certain limit) make his award within three months from the date at which he commences his judicial inquiry into the case. The parties, however, by consent in writing, or the Court of which the document or order has been made a rule, may, upon good cause shown, extend this time; and, if no period be stated for the extension, it is to be deemed to be for one month.

Where there are two arbitrators and an umpire, and the arbitrators shall have allowed their time, or extended time, to elapse without making an award, or shall have stated in writing that they cannot agree, the umpire shall enter upon the reference in lieu of the arbitrators.

In cases to which the above enactment does not apply, if no limit be prescribed by the submission, the arbitrator's authority will continue for life, unless it be revoked, which it may be if he neglect to proceed within a reasonable time after being requested to do so.

An arbitrator cannot himself fix a limit for making his

award if the submission give him no express power to do so.

When a certain limit is fixed by the submission for making the award, the expression "within" includes the last day of any given term. Thus, if an award is to be made "within three months from the 25th of March," it will be sufficient if it be made on the 25th June. And if the time given be "until" a certain day, the award may be made at any time during that day. If the limit be expressed to be merely a certain number of "months," without anything to show an intention to the contrary, the term must be computed by lunar months.

By the Lands Clauses Consolidation Act, 1845, the award of two arbitrators, neither of whom refuses or neglects to act, must be made within twenty-one days after the appointment of the last of the two.

Unless power be conferred by the submission, an arbitrator cannot *extend* a time for making his award named in the submission. It is very usual, however, to give him power, sometimes of himself and sometimes with consent of Court, or of a judge, to enlarge the time. The enlargement must, however, be made before the expiry of the time originally fixed.

Unless any special mode of making an enlargement be prescribed by the submission, it may be made in any form he pleases that expresses his intention. The ordinary provision in an order of *Nisi Prius*, after stating a day by which the award is to be published, proceeds, "or any day to which the arbitrator shall, by writing under his hand to be endorsed hereon, from time to time enlarge the time for making his award."

If the direction be that the award is to be made on a certain day, or on or before any other day to which the arbitrator shall enlarge the time, he is not limited to one enlargement only, even in the absence of the words "from time to time."

Under the Lands Clauses Consolidation Act, the two arbitrators previously mentioned, whose original powers are limited to twenty-one days, have a power of extension to three calendar months, but no further.

Even where the submission contains no power of enlargement of the time, or where it contains such a power, and, through it not being exercised, the time has elapsed, an extension may be made by consent of the parties. Indeed, the conduct of the parties will sometimes be taken to amount to a consent to enlargement, and a consequent revival of the arbitrator's powers; though, of course, it is better such consent should be in writing, and it will then require a stamp, even though endorsed on the arbitration bond. As the consent virtually amounts to a new submission, the enlargement should in every case be made by a deed of the same character as the original submission. If parties knowingly attend meetings after time has expired without proper enlargement being made, and make no objection, they cannot afterwards claim that the arbitrator's authority was at an end.

Formerly, neither the Courts nor a judge could enlarge the time when lapsed, without the consent of the parties; but by 3 & 4 Will. IV., c. 42, it is enacted, the Court, or any judge thereof, may from time to time enlarge the term for the making of his award by an "arbitrator, or umpire, appointed by, or in pursuance of, any rule of Court or judge's order, or order of *Nisi Prius*, in any action now brought, or by, or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of His Majesty's Courts of Record."

It is necessary to note a difference between the enlarging powers of an arbitrator and of the Court. The arbitrator must exercise his power within the time originally given for the making of his award; but the Court may enlarge a period at any time it thinks proper, and the effect will be to render valid any acts which would otherwise, from the lapse of the original period, have been void.

The substance of the foregoing remarks will be found in the following Table :—

TABLE IV.

Arbitrator's Powers as to Limits of Arbitration.

Must not deal with matters arising after date of writ, unless by special authority.

May make his award on date of submission, if no special time stated therein.

Under Common Law Procedure Act, must make award within three months, unless special arrangement otherwise.

Where said Act does not apply, authority continues till revoked.

Cannot fix a limit unless under special power.

Cannot extend stated time unless by special power.

CHAPTER V.

POWERS OF THE ARBITRATOR — AS TO NAMING TIME AND PLACE — WHERE SEVERAL PARTIES, ARBITRATOR NO AUTHORITY TILL ALL HAVE EXECUTED SUBMISSION — ARBITRATOR MAY REVOKE APPOINTMENT WHEN MADE — ARBITRATOR MAY INSIST ON PARTY'S ATTENDANCE THOUGH INCONVENIENT — INTENTION TO EMPLOY COUNSEL SHOULD BE NOTIFIED — PROCEEDINGS SHOULD RESEMBLE TRIAL IN COURT — ARBITRATOR MAY REFUSE TO HEAR COUNSEL — MAY REFUSE TO ALLOW ASSISTANCE OF SKILLED STRANGER — MUST NOT RECEIVE EVIDENCE IN ABSENCE OF OPPOSITE PARTY — MUST NOT EXCLUDE PERSONS DESIRED BY PARTY WITHOUT JUSTIFICATION — MAY TAKE EVIDENCE AT HOUSE OF WITNESS UNABLE TO ATTEND — BRIEFS SOMETIMES LEFT WITH ARBITRATOR BEFORE HEARING — ADVANTAGES OF THIS COURSE — UNDER CERTAIN ACTS ARBITRATOR MUST MAKE DECLARATION — ARBITRATOR MUST NOT CLOSE PROCEEDINGS HASTILY — MUST GIVE PARTY TIME TO GO INTO CASE EVEN AFTER UNNECESSARY DELAY — ALSO TO INVESTIGATE UNEXPECTED CASE — SHOULD TAKE WRITTEN NOTES — SHOULD HAVE POWER TO CALL FOR ALL BOOKS AND PAPERS — MUST NOT RECEIVE PRIVATE COMMUNICATIONS FROM EITHER SIDE — DANGER OF SO DOING — IRREGULARITIES OF ARBITRATOR MAY BE CONDONED BY PARTIES — WHEN ARBITRATOR MAY PROCEED EX PARTE — WHEN ARBITRATOR IN DOUBT AS TO ADMISSIBILITY OF EVIDENCE — ARBITRATOR NOT CONFINED TO EVIDENCE ON MATTERS SUBMITTED — ARBITRATOR MAY APPLY TO COURT FOR ADVICE — ARBITRATOR'S POWER OF AMENDING ERRORS IN RECORD — ARBITRATOR MUST NOT DELEGATE DUTIES — MAY TAKE OPINIONS — LAY ARBITRATOR MUST NOT EMPLOY SOLICITOR TO SIT WITH AND ADVISE HIM IF OBJECTED TO — LAY ARBITRATORS MUST NOT SURRENDER THEIR OPINIONS TO THAT OF LEGAL ARBITRATOR.

LET us now consider that the arbitration has arisen in some one of the ways indicated in our first chapter, and that the arbitrator is appointed. What will be the nature of the proceedings, and of his duties, at the first meeting?

Providing the arbitrator acts within his authority, and with due impartiality, his word is law as to the mode in which the reference shall be conducted. It lies entirely with

him to direct the time and place of meeting, and it is the duty of the parties to obey. It is very usual for the party wishing to proceed with the reference to wait upon the arbitrator with the submission, and request him to appoint a meeting. If an arrangement cannot be made convenient to all parties, it will be for the arbitrator to make an appointment, and give particulars thereof in writing to the party applying, who will serve a copy upon his opponent.

I should mention that, where there are several parties to a submission, the authority of the arbitrator does not commence until all have executed it; and he has no power to decide on a separate issue between two of the parties, even though they may have signed, while there are others who have not.

The arbitrator should not fix on too early a day, as the parties have to get up their cases; on the other hand, too distant an appointment may inflict damage on the party entitled to recover. And even when the appointment is made, the arbitrator may revoke it if he see sufficient cause. If either party give timely notice to his opponent, and to the arbitrator, that he cannot, or that it will be inconvenient for him to attend, the arbitrator may either insist on his attendance or make another appointment as he shall think fit.

An intention by either side to employ counsel should be notified to the opposing party, to give him an opportunity of doing likewise. In a case where no such notice was given, and the arbitrator refused to grant a postponement asked for by the party who had no counsel, in order that he might obtain that assistance, the Court annulled the award, on the ground that the arbitrator had not acted fairly between the parties.

An arbitrator will do well to endeavour to assimilate the proceedings before him as nearly as possible to a trial in

Court. It is, therefore, usual and proper for the parties to be represented by their attorneys or counsel, and to appear with witnesses to support their respective cases. It appears that arbitrators have the power to decline to hear counsel if they think fit, though it would probably be unwise to exercise it.

Where an arbitrator refused to allow a stranger, skilled in the matters in dispute, to assist the attorney of one of the parties, the Court held he had not exceeded his powers. It has even been said that, under very peculiar circumstances, an arbitrator would be justified in excluding the parties and their attorneys, and examining the witnesses himself. On the other hand, a party may properly apply to have an arbitration stopped if the arbitrator receive evidence against him behind his back, even although the arbitrator inform him of the evidence, and re-hear the witness in his presence.

Where certain persons, whose attendance one of the parties wished to have, were excluded without sufficient justification being shown, the award was set aside on the ground that the party's interests might have been unfairly prejudiced.

It is competent for an arbitrator to take the evidence of a person who is physically unable to attend, at that person's own residence.

A point in which arbitrations differ considerably from trials in Court is the custom (by no means infrequent) of both parties leaving their briefs with the arbitrator before the first hearing. He is thereby familiarized with the nature of the case on either side, and the proceedings are much shortened, as fewer observations of counsel will suffice in setting the facts before him.

It should be noted, that under the Lands Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation

Act, 1845, an arbitrator must, before entering upon his duties, make and subscribe a declaration in the presence of a justice of the peace (not necessarily of the county in which the matter in dispute arises), in a certain form prescribed by the Acts, that he will decide honestly and to the best of his ability.

An arbitrator must be careful not to close a reference too hastily; and even though a party may have occasioned unnecessary delay, the arbitrator must not make his award without giving the party due notice, and an opportunity of properly going into his case. Even when the time for making the award had expired, excepting two or three days, and the arbitrator refused a request to defer making his award until a party satisfied him as to certain matters, the award was set aside. An arbitrator must allow time for a party to investigate an unexpected case set up by his opponent.

It is very desirable that an arbitrator should carefully take written notes of the evidence, for comparison of a witness's examination-in-chief with his cross-examination, and of the evidence of different witnesses. They will also be useful if proceedings are afterwards taken on the award.

It is usual to give the arbitrator (by the order of reference) power to call for all books and papers which he may require, and compliance with his demands may be enforced by attachment.

Too much stress cannot be laid on the desirability of an arbitrator receiving no private communications from either side, and of hearing no evidence except in the presence of the opposite party. The dangers of an annulling of the award incurred by so doing are very great; for though there are decisions on either side, the preponderance of feeling, both in the Common Law and Chancery Courts, appears to be

against upholding awards in references where such irregularities have been committed.

It is important to remember that any irregularity on the part of the arbitrator may be condoned by the parties, and will not vitiate the award if the parties or the party aggrieved by the irregularity can be shown to have had full knowledge thereof, and by their or his conduct to have waived any objection thereto. If, for instance, a party attends meetings after knowing that certain witnesses have been examined in his absence by the arbitrator, and makes no objection to what has been done, he will be held to have waived the irregularity. If, however, a party appears before an arbitrator and protests against his authority, and, that protest being overruled, proceeds to cross-examine his adversary's witnesses, or to call witnesses on his own behalf, he may subsequently appeal against the award as being void, providing his objection to the arbitrator's authority be well founded. A party may not, of course, quietly wait, reserving an objection until he sees what chance he stands of obtaining an award in his favour, and then, when he finds it unfavourable, attempt to upset it on the ground of irregularity. And in all cases where an irregularity has occurred, it is open to the arbitrator to set matters right by apprising the parties of the defect, and obtaining their acquiescence in such a fair and reasonable course as seems likely to remedy the evil without injury to either party.

With regard to the proceeding with a reference in the absence of one of the parties, although, as has been previously pointed out, such a course is highly injudicious and dangerous where both sides are willing to comply with the terms of the submission, it is open to the arbitrator (and, indeed, imperative upon him), in the case of a recalcitrant party, who, having been duly summoned, neglects to attend, with a view to defeating justice, to give him notice of the time and place where he (the arbitrator) intends to proceed

with the reference, and so to proceed in his absence if he still neglect to attend. An arbitrator may also proceed *ex parte* where a party refuses to attend after having unsuccessfully attempted to revoke the submission on the ground that the arbitrator had no authority. In all cases of proceeding *ex parte*, however, the arbitrator must be careful not to do so without giving the refractory party due notice of his intention. And even after a party has refused and neglected to attend several meetings, still due notice should be given him of all further meetings held up to the conclusion of the reference, to give him an opportunity of changing his mind if he thinks fit.

An erroneous decision by an arbitrator on a point of evidence, such as the admissibility of certain documents, or the propriety of allowing proof of certain facts, will not invalidate an award; but a refusal to hear certain evidence under a mistaken impression that it refers to matters not within the scope of the reference will be considered as an omission to decide on all matters submitted, and will be fatal to the award. Therefore, if a doubt arise as to whether a certain matter is within the reference, the arbitrator will do well to receive the evidence, and deal with the doubtful matter in his award separately from the others. In this way, if the matter should properly have been excluded, his award will be bad only as regards that matter, and will hold good as to the rest, while had he omitted to deal with all that *should* have been included, the mistake would be fatal to the whole.

An arbitrator is not bound to confine himself to evidence upon the matters submitted for his decision, if inquiry into collateral subjects be necessary to enable him to arrive at a right decision. In some cases the arbitrator has power, under the terms of the reference, to apply to the Court for directions on any subject on which he may be in doubt, when his proper course will be to "state a case" setting forth the

necessary facts. An arbitrator's power of amending errors in the record will depend on the terms of the submission.

Although an arbitrator may not delegate his duties * to any other person, but must perform them himself, he may take the *opinion* of others upon certain questions affecting the merits of the case before him. Lord Alvanley, upon this point, said, "A man may make use of the judgment of another upon whom he can depend, and the valuation of that person is his if he choose to adopt it." An arbitrator may therefore avail himself of the assistance of persons specially skilled on any point wherever he may feel he stands in need of it. At the same time he must not place a blind and implicit faith in the opinion so given him, but only use it in forming his own judgment, and the obtaining of such assistance will not relieve him from his obligation to hear evidence on the points in question.

If a legal arbitrator be objected to, and a layman be appointed, either party may successfully object to his employing an attorney to sit with and advise him. Even if he employ an accountant, he must give the parties an opportunity of objecting.

Where there are two lay and one legal arbitrators, the laymen must not leave it entirely to the lawyer to decide even the points of law, so as to *surrender* their own opinions to his, but must only make use of his superior legal knowledge to *aid* them in forming their own decisions. (Sharp *v.* Howell, 6, C.B., 253.)

It does not appear that the assistance of a skilled person to advise the arbitrator need necessarily be sought *with the knowledge of the parties*, though it would no doubt be more judicious on the arbitrator's part not to conceal the fact from them.

* This applies to judicial duties only, as it appears clear that acts such as the measuring of land, &c., may be performed by deputy.

CHAPTER VI.

OF JOINT ARBITRATORS AND UMPIRES — PROVISIONS OF COMMON LAW PROCEDURE ACT — APPOINTMENT OF UMPIRE MUST BE SIGNED BY BOTH ARBITRATORS TOGETHER — JOINT ARBITRATORS MUST FORM THEIR OWN OPINIONS INDEPENDENTLY — SHOULD NOT BE TOO STUBBORN — ACTS OF JOINT ARBITRATORS INVALID UNLESS DONE IN CONCERT — IF THIRD PERSON TO BE APPOINTED, ALL ACTS OF JOINT ARBITRATORS INVALID UNTIL APPOINTMENT MADE—"UMPIRE," PROPERLY SO CALLED — SOMETIMES NAMED IN SUBMISSION — MUST DECIDE ON ALL POINTS, IF ON ANY — PROVISIONS OF VARIOUS ACTS AS TO UMPIRES — COMMENCEMENT AND LIMIT OF TIME FOR MAKING AWARD BY UMPIRE — PROVISIONS OF LANDS CLAUSES CONSOLIDATION ACT IN EVENT OF UMPIRE FAILING TO MAKE AWARD — UMPIRE MUST NOT TAKE EVIDENCE FROM NOTES OF ARBITRATORS — SOMETIMES SITS WITH ARBITRATORS — IF SO, MUST NOT INTERFERE WITH THEM.

I HAVE now dealt fully with the duties and powers of the single arbitrator, and propose next to consider the points specially affecting the offices of joint arbitrators, and of *umpire*, i. e. a person appointed to decide between two arbitrators, it being a common practice for the submission to provide that the plaintiff and defendant shall each appoint an arbitrator, and by the Common Law Procedure Act it is provided that,

> "When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid (i. e. *by a notice in writing from any party*) to make the appointment sooner."

The appointment of an umpire, when in writing, will be invalid unless signed by both arbitrators together.

Where there are three or more arbitrators, and no clause empowering a majority of them to give a binding decision, each must act as if he were sole arbitrator; for the office being joint, if one omit to act, any decision by the remainder is invalid.

All remarks made in last chapter as to illegality of a single arbitrator surrendering his opinion to that of another person apply with equal force to joint arbitrators and to umpires, who must not allow themselves to give an opinion, or agree to any particular decision, simply because it is that of their colleagues; nor must they agree beforehand to be bound by the decision of any one particular person. Nevertheless, I need hardly point out that it is the duty of all so situated to hold their minds open to honest conviction, whether by argument or otherwise, and that nothing is to be more avoided by all persons holding judicial or semi-judicial functions, than stubbornness.

It is especially worthy of note that nothing done by joint arbitrators will hold good, unless done by all in concert. Thus, every arbitrator must be present at every meeting, to render the proceedings valid.

It has been before mentioned that, where the submission requires the appointment of a third person by the joint arbitrators before they proceed with the reference, all proceedings taken before such appointment is made are invalid.

Even where an award made by two out of three arbitrators is to hold good, the third must be appointed before any steps are taken, so that the parties may have the benefit of the judgment of all three. The two first appointed must not look upon the third merely as an umpire, to be appointed and called in in case of difference between them. But it may, of course, be that the intention of the submission is for the third arbitrator to be called in to decide, in the event of the first two not agreeing in an award, and it is then that he will properly be styled an "umpire."

The umpire is sometimes named in the submission, but it is more usual to leave his appointment to the arbitrators; and they must remember that the umpire is to act as between the parties, and not between themselves. Thus, they must not require the umpire's decision on one point of disagreement; but if they cannot agree on all points, they must refer it to the umpire to decide on all points, unless they are especially empowered by the terms of the submission to act otherwise.

In the Lands Clauses Consolidation Act, 1845; the Railways Clauses Consolidation Act, 1845; the Railway Companies Arbitration Act, 1859, and the Companies Clauses Consolidation Act, 1845, the provisions are nearly identical, and are to the effect that, where more than one arbitrator has been appointed, they shall, before entering upon the reference, appoint, in writing, an umpire, to decide on any matters on which they shall differ.

An umpire's limit of time for the making of his award will commence from the disagreement of the arbitrators, except where a time is named by which their award should be made, in which case his authority will commence from that date. It cannot commence before, as up to that time it is open to them to agree. If a time be named in the submission for the making of an award by the umpire, it must, of course, be made by that time, unless the limit be enlarged by the Court or a judge. By the Lands Clauses Consolidation Act it is provided that if the arbitrators or their umpire shall for three months have failed to make an award, the question is to be settled by a jury; and though it is not clear from what date the three months ought to be computed, decisions in the Courts appear to show that the umpire is to have three months to himself from the expiration of twenty-one days after the appointment of the last of the arbitrators (the time allotted by the statute for the making of an award by the

arbitrators), or from the expiration of such enlargement of their limit as the arbitrators may legally make.

An umpire's duties so closely resemble those of an arbitrator that it will be needless to recapitulate them, nearly all that has previously been said as referring to arbitrators applying equally to the umpire. He must not, unless by special arrangement, take the evidence from the arbitrators' notes, but must hear the case for himself. It is, therefore, sometimes arranged, in order to save the expense of two separate investigations, that the umpire shall sit with the arbitrators. In this case he must be careful not to interfere in any way with the arbitrators in trying to agree. An umpire's decision must be in no way affected by the opinions of the arbitrators. Thus, unless the terms of the submission specially permit such a course, where the arbitrators agree on certain points and refer others to the umpire, he must not limit his award to these, but must award on all the points, even though he differ from the arbitrators on those matters on which they are agreed.

CHAPTER VII.

OF EVIDENCE — MATTERS MAY BE ADMITTED "BY ARRANGEMENT" — PROOF MUST BE AS STRICT AS IN COURTS OF LAW — DANGERS OF IRREGULARITY — SURVEYORS *v.* LAWYERS AS ARBITRATORS — EVIDENCE ON OATH — ACT REFERRING TO SAME — FORM OF OATH — ARBITRATOR'S DISCRETION AS TO QUANTITY OF EVIDENCE — WITNESSES MUST BE DISTINCTLY TENDERED — EVIDENCE MUST BE HEARD — EFFECT OF HEARING ONE SIDE ONLY — LORD ELDON'S OPINION — SKILLED ARBITRATOR MAY DISPENSE WITH CERTAIN EVIDENCE — VIEW OF PREMISES OPTIONAL WITH ARBITRATOR UNLESS EXPRESSED — ARBITRATOR MUST NOT REQUIRE CERTAIN EVIDENCE, AND THEN MAKE AWARD WITHOUT HEARING IT — ARBITRATOR MUST NOT AWARD WITHOUT HEARING EVIDENCE — "SECONDARY" EVIDENCE — "HEARSAY" — COPIES OF LETTERS — REPLIES TO LETTERS — POSTMARKS AS EVIDENCE OF TIME OF POSTING — HANDWRITING PROVED BY COMPARISON — BY WITNESSES — PLANS PROVED FROM ACTUAL SURVEY — FIGURING AND SCALES — DANGERS FROM INACCURACY — DEEDS: HOW TO PROVE — WILLS — WARRANTS OF ATTORNEY — STAMPING — COUNTERPARTS — VERBAL EVIDENCE OF CONTENTS OF DOCUMENT — ENTRIES IN BOOKS: HOW PROVED — MAY NOT BE USED BY PARTY, BUT BY OPPONENT — RECEIPTS — EVIDENCE BY ATTORNEY AS TO COMMUNICATIONS WITH CLIENT — EVIDENCE BY ARBITRATOR — SURVEYOR MAY REFER TO MEMORANDA — DISBELIEVER IN ETERNITY — TABLE V., RULES AS TO EVIDENCE — "LEADING" QUESTIONS — DIRECT EVIDENCE — EXAMINATION — CROSS-EXAMINATION — RE-EXAMINATION — PROTECTION OF WITNESSES — IRRELEVANT QUESTIONS — BEST MODE OF CHECKING COUNSEL.

THE claimant or plaintiff having opened his case, it is his duty to prove it as strictly before the arbitrator or umpire as if it were being heard in a court of law. Of course, "by arrangement," many matters which would have to be strictly proved in Court may be either admitted without proof, or on very slight, and often irregular, evidence; but it is better for our purpose to assume that the matter is one where the parties are most hostile, and will "admit" nothing. It will then soon be found that the popular idea that strict

evidence is not required in an arbitration must be discarded; that the arbitrator is really bound by the same rules as a judge, and that his award will be set aside for (in some cases) the improper rejection of evidence tendered by either party; for receiving affidavits instead of *vivâ voce* evidence when he is directed to examine the witnesses on oath, and for other irregularities. It is especially with regard to this question of dealing with evidence that lawyers make the assertion before referred to, that we laymen are not so well qualified to undertake the duties of an arbitrator as themselves, whose daily pursuit of their profession brings them into contact with witnesses, and enables them to be much better judges, both of what is legally evidence and of the effect of it when given. But it is not in every case that the issues raised *are* questions of evidence; on the contrary, in most cases (at any rate, under the Acts of Parliament I have referred to) the question is a practical or scientific one, and *not* a legal one; and I think even lawyers would agree that, just as in many cases they may be the better able to sift evidence, or legally construe documents, we must be the better judges of damage done to lands or houses, the cost and nature of dilapidations, the value of property taken by railways, the proper compensation for rights of common, the best mode of setting out roads, the defining of boundaries, and, indeed, nine-tenths of the matters which Parliament has considered should be settled by arbitration. Nevertheless, the question of evidence is one of immense importance in the conduct of arbitrations, and to its consideration I propose that we should now turn.

Where the order of reference requires that evidence shall be given on oath (as is generally the case), the arbitrator cannot receive it otherwise, except by consent of the parties. It should, however, be noted that if no objection be taken at the time of examination, the party so not objecting will be held to have assented to the omission of the oath. If no mention of the point be made in the order of reference, an

arbitrator may, if he pleases, under 15 & 16 Vict., c. 99, insist on administering an oath. If by the order it is left to the arbitrator's discretion whether he will examine the witnesses on oath, he may exercise his option even though one of the parties require them to be sworn. No particular form of words is necessary to make an oath good in law. The usual form is as follows:

> "You swear that the evidence which you shall give before me touching the matters in question in this reference shall be the truth, the whole truth, and nothing but the truth. So help you God."

An arbitrator may exercise a certain discretion as to the quantity of evidence he will hear; but the greatest caution is necessary on this point, as an award may be set aside for a refusal to receive proof where the same was necessary. A witness must, however, be *distinctly tendered* to the arbitrator for examination, and the nature of the evidence stated to entitle the party calling him to impeach the award on the score of his non-acceptance.

An award made in an action for the non-repair of property, without the parties being heard, will not hold; as, though the property itself might be sufficient evidence to the arbitrator as to the non-performance of covenants, a hearing might disclose facts of importance to the issue.

A refusal, whether wilful or accidental, to hear one side, will invalidate any award. On this point I cannot refrain from quoting the noble words of Lord Eldon, who said, "By the great principles of eternal justice, which is prior to all acts of sederunt, regulations, and proceedings of Court, it is impossible that an award can stand when the arbitrator hears one party and refuses to hear the other."

An arbitrator of special skill and knowledge in the matters in dispute may, however, refuse to hear certain evidence, or

receive statements, if he feels that, from his own knowledge, such evidence or statements could have no effect upon his decision.

In the absence of any express direction in the submission, it is optional with the arbitrator whether he will comply with the request of one of the parties to view premises.

An award will be set aside if the arbitrator promises to hear witnesses or requires certain books to be looked into, and then makes his award without hearing the witnesses, or waiting for the information, or giving notice that he has found it unnecessary to do so.

An arbitrator cannot now make an award without hearing evidence (formerly this was not so); and one most important rule to be remembered is, that the best evidence must be given that can be obtained, and that until that is exhausted, what is called "secondary evidence" must not be given. This rule excludes "hearsay" evidence; that is, a witness stating what he has *heard* that A. did or said; and nothing that a third party did or said is evidence against the parties to the reference, unless it was said in their presence or done with their knowledge.

Again, a copy of a letter or other document cannot be read until it has been proved that the original has been lost or destroyed (a copy of a letter being an instance of the secondary evidence above alluded to); but if proper steps have been taken to procure the production of the original, a copy may sometimes be used. Further, a *reply* to a letter is not evidence until the letter in reply to which it was written has been proved.

The postmark on the envelope of a letter has been held not to be conclusive proof of the time of posting.

Handwriting may be proved by comparison, that is, comparing the handwriting of one document, admitted to be written by A., with one not so admitted; but this is a most unsatisfactory mode of proof, and, if possible, some person

should be called as a witness who is acquainted with the handwriting to be proved.

Plans must be proved by the person making them, and should be made from actual survey. They should either have the dimensions figured on them, or a scale attached; and I need hardly say that it is of the most vital importance that such figures or scale should be very accurate. I was concerned in a case not long since where, owing to a certain drawing (prepared by a well-known architect) not scaling in accordance with the admitted facts, the judge ordered an adjournment of the case for accurate plans to be prepared.

Deeds thirty years old need no proof of their execution if they apparently come from a proper custodian of them; and those of less antiquity may now be proved by a witness who is acquainted with the signatures. (Formerly it was necessary, if possible, to produce the person who saw the deed executed.) This, however, does not apply to wills and warrants of attorney. A deed must not, of course, be admitted as evidence unless it be properly stamped; so that it is necessary for an arbitrator to have some knowledge of the Stamp laws. If, however, the opposite party take no objection to the deed on this score, the arbitrator is not bound to do so; but he must uphold a properly-taken objection when made.

If a deed be executed under a power of attorney, the power must be produced.

As a general rule, the counterpart of a lease cannot be given in evidence unless notice has been served to produce the lease itself.

Parol evidence can only be given in explanation of a written document where there is some latent ambiguity in the document which is unintelligible without such explanation. Verbal evidence cannot be given of the contents of a written document which is not produced, nor its absence accounted for.

Entries in books kept by a party cannot be used by him to prove his case, but his adversary may use them against him. The reason for this, of course, is, that there is nothing to

prevent a man making in his books any entries he may think convenient to assist him—for instance, the payment of moneys not actually paid; but it is not likely he would falsify the entries in a manner which he thinks likely to operate against himself. Further, the entries being made without the knowledge of the other party, there are the same reasons for not allowing them to be used as for rejecting "hearsay" evidence. In a case where an arbitrator refused to compel the plaintiff to allow the defendant to inspect his (plaintiff's) books, the Court ordered that his authority should be revoked unless he did so. No books, ledgers, or vouchers of any kind can be tendered as evidence to show income or expenditure, or for any purpose, even by the principal of a firm, unless they are in his handwriting; but the bookkeeper, or other person making the particular entries, must attend to prove them, and he may be examined upon his method of entering them, and the materials whence he was enabled to do so. Further, he may, of course, be questioned as to their *bonâ fides.*

A receipt is not *conclusive* evidence.

Attorneys, counsel, and their clerks, are privileged from giving evidence as to communications made by their clients; and an attorney will be prevented from disclosing his client's secrets, even after he (the attorney) has been struck off the rolls.

An arbitrator cannot be compelled to give evidence as to matters that occurred before him during a reference, but may be called to prove what matters were *claimed* before him.

It is held that a surveyor is entitled to refer, to refresh his memory, to a copy of his report, if proved to have been made from his original notes. Thus, a surveyor must not refer to a specification of dilapidations written out from memory, but only if it were actually taken on the premises at time of survey.

A person who has no notion of eternity, or a future state of rewards and punishments, is not competent to be a witness.

The following Table will be found to contain the essence of the foregoing remarks:

TABLE V.

Rules as to Evidence.

"Secondary" evidence not admissible, if better can be given.

"Hearsay" evidence not admissible.

Copies not evidence till satisfactory reason be given for non-production of originals.

Reply to letter not evidence till letter proved.

Postmark not conclusive evidence of time of posting.

Handwriting may be proved by comparison.

(Preferable, however, to prove by witness acquainted with the handwriting.)

Plans must be proved by the person making them, and must be figured, or have scale attached.

Deeds thirty years old require no proof.

Deeds of less antiquity to be proved by persons acquainted with signatures (except wills and warrants of attorney).

Deeds not admissible unless properly stamped.

If deeds executed under power of attorney, same to be produced.

Counterpart lease inadmissible unless notice given to produce lease.

Parol explanation of document only admissible when same is unintelligible without.

Verbal evidence of absent document only admissible when non-production accounted for.

Entries in party's books not evidence for him, but may be used against him.

Must be proved by party actually making them.

Receipt not conclusive evidence.

Attorneys, counsel, and their clerks not witnesses as to communications with their clients.

Arbitrator compelled to give evidence only as to matters claimed before him.

Witness may refer to report made from original notes of survey.

Disbeliever in eternity no witness.

A difficulty that frequently arises is as to the form of question to be put to a witness, it being a rule that a party calling a witness must not ask him what are termed "leading" questions, i. e, questions which indicate the answer that is required; nor (unless the witness is "hostile") can the

party calling him examine him except upon such matters as are direct evidence upon the issues; nor ask him questions tending to contradict the evidence he has given. On the other hand, the adverse party can cross-examine a witness upon almost any subject, and for almost any length of time (as we have seen in the "great interminable" Tichborne case), and can also examine him, and then call other evidence to prove that his testimony is untrue. In *re-examination*, a witness can only be questioned on matters touched upon in his cross-examination.

The arbitrator will find that one of his greatest difficulties is as to the extent to which witnesses are entitled to his protection. It, of course, will constantly be the cue of a counsel or solicitor, in cross-examining a witness, to confuse or "bother" him—a practice which, even in our Superior Courts, is often carried to a lamentable extent. While fairly done, however, it would be injudicious for an arbitrator to interfere; but there are times when his interposition, even unsought by the witness, becomes imperative. Sometimes a question will be asked (for the simple purpose of irritating a witness, and thus throwing him off his guard) which is quite irrelevant to the issue. In such cases the best course is, perhaps, quietly to ask the cross-examining counsel or solicitor whether he has any ulterior object in asking the question, as you cannot quite see how it affects the issue, and this will generally have the desired effect.

CHAPTER VIII.

OF THE AWARD — MUST BE GOVERNED BY SUBMISSION — VERBAL AWARDS — AWARD USUALLY IN WRITING AND STAMPED — PROVISIONS AS TO AWARDS UNDER LANDS AND RAILWAYS CLAUSES CONSOLIDATION ACTS, AND RAILWAY COMPANIES ARBITRATION ACT — WHEN AWARD TO BE PUBLISHED BY A CERTAIN DAY — HOW PUBLICATION MADE — WHEN MORE THAN ONE ARBITRATOR — APPLICATION TO SET ASIDE AWARD — WHEN AWARD TO BE DELIVERED BY STATED TIME — LANDS CLAUSES CONSOLIDATION ACT AS TO DELIVERY OF AWARD — STAMPING OF AWARDS — WHAT AWARDS EXEMPT — NO PARTICULAR FORM NECESSARY FOR AWARDS — MUST CONVEY DECISION — RECITAL OF SUBMISSION — OF ENLARGEMENT — OF VIEW — IRREGULARITIES WHICH WILL NOT INVALIDATE AWARD — AWARD BY CERTIFICATE — AWARD MUST NOT BE MADE IN PARTS — EXCEPTION — AWARD MUST DECIDE ALL MATTERS SUBMITTED — MUST GIVE DIRECTIONS FOR CARRYING DECISION INTO EFFECT — MUST DECIDE THE PRECISE QUESTION SUBMITTED — MUST NOT LEAVE THE RESULT CONDITIONAL — MAY IMPOSE ALTERNATIVE — MUST BE CERTAIN IN ITS TERMS — AWARD WHEN BAD IN PART — AWARD DEALING WITH MATTERS NOT SUBMITTED — EMPLOYMENT ON AWARD OF ATTORNEY TO PARTY — TABLE VI., MATTERS WHICH WILL INVALIDATE AN AWARD — ARBITRATOR'S AUTHORITY ENDED BY MAKING OF AWARD — MAY NOT CORRECT EVEN SLIGHT ERROR IN AWARD — WHEN AWARD SET ASIDE — "REFERRING BACK" AN AWARD — DUTIES OF ARBITRATOR WHEN AWARD REFERRED BACK — LIMIT OF TIME WHEN AWARD REFERRED BACK — ENFORCEMENT OF AWARD — SUGGESTIONS — COLLATERAL SECURITY FOR PERFORMANCE OF AWARD — CONVEYANCE OF PROPERTY IN DISPUTE TO ARBITRATOR.

THE arbitrator or umpire in making his award, must consider, first of all, and comply with, any express directions given on that head in the submission, as departure from special directions on such points as whether the award is to be in writing, or under seal, or under hand only, will be fatal to its validity. A verbal award is not invalid, unless it be specified by the submission to be in writing; but it is almost unnecessary to point out the desirability of a decision of such a character being *written*. It is usual for the award

to be a written document, signed by the arbitrator in the presence of an attesting witness. This must be stamped, and is handed to the party who "takes up" the award. Unstamped copies are generally supplied by the arbitrator to the other party or parties to the reference.

Under the Lands Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act, 1845, the award must be in writing. These Acts further provide that the declaration which the arbitrator has to make before entering on the reference, is to be annexed to the award. Under the Railway Companies Arbitration Act, 1859, the award must be not only in writing, but under the hand of the person making it. All three Acts contain the important enactment that no award made under their provisions shall be set aside for irregularity or error in matter of form.

The submission usually provides that the award is to be published ready to be delivered by a certain day. It will not be invalid, though not delivered on the appointed day, if ready to be so. The publication of an award is generally made by the arbitrator notifying to the parties in writing, that his award is made and ready to be delivered on application and payment of charges. If there be more than one arbitrator, the award cannot of course be published till all (or the number required by the submission) have signed; and it has been before mentioned that in such a case all should sign together and in presence of one another. In cases where a time is stated, within which any application to set aside an award must be made, that time will commence from the date of publication of the award to the parties.

The submission may direct that the award shall be *delivered to the parties* by a certain day, and if so the direction must be followed, and it will not suffice that the award be ready to be delivered on that day and the parties notified of the fact.

Under the Lands Clauses Consolidation Act it is provided that the arbitrators shall deliver their award in writing to

the promoters of the undertaking, who are to retain the same, and, at their own expense, furnish a copy to the other party on demand; and shall on demand produce the original for inspection.

There are certain exceptions to the rule requiring awards to be stamped. Awards in arbitration for settlement of disputes between masters and workmen are exempt, and it is probable that awards in references by assignees of a bankrupt would be free also. An award may be stamped at any time after execution on payment of the penalty, and free of penalty if taken to the office within six or eight weeks after execution.

No particular form of words is necessary to constitute an award, but an arbitrator cannot be too careful and precise in the language he employs. And, above all, he must take care that his words convey a *decision*. Where an arbitrator wrote, "I *propose* that a sum of 100*l*. should be paid to the plaintiff by the defendant," this was held not to constitute an award. An arbitrator, in drawing up his award, should recite so much of the submission as gives him his authority and sets forth the matter in dispute, and also any clauses conveying special powers or directions. He will also do well to mention the fact of any enlargement of time, and of his having viewed premises, where he was required by the submission to do so. The omission to mention or recite such points will not however affect the validity of the award.

Such errors as the following will not invalidate an award: An erroneous recital of the submission, or of a portion thereof. A mistake in the Christian names of the parties appointing the arbitrator or umpire. A statement that the umpire was appointed by the parties, when the appointment was by the arbitrators. A mis-statement as to the date of the submission, or of an enlargement of time. A recital that the submission was by judge's order when same was by order of Nisi Prius.

In order to save the expense of the stamp, an arbitrator is sometimes directed, instead of making a formal award, to express his decision in a certificate, stating for whom, and for what amount, a verdict should be entered. This requires no stamp.

An arbitrator must not, unless specially empowered by the submission, make his award in parts, or at different times; but must deal with the whole of the matters submitted to him in one award. There is, however, an exception to this rule under the Railway Companies Arbitration Act, 1859, by which the arbitrators may, if they think fit, make several awards each on part of the matters referred.

An arbitrator must be careful to make his award a final decision on all matters submitted. His award will be bad if he determine all matters except one, and gives leave to one party to prosecute that matter.

Where an arbitrator had to decide on alleged defects in a building, on the builder's claims for extra works, and deductions for omissions, and to ascertain what balance was due to the builder, an award which ordered a gross sum to be paid to the builder in satisfaction of all matters in difference was held invalid, as it did not decide as to the alleged defects, and left it in doubt as to whether the sum awarded was as payment for the extra work.

An arbitrator must not only decide the questions submitted to him, but must give the necessary directions for such acts as are necessary to carry his award into effect. Thus, where an arbitrator had to allot certain lands among several tenants in common, who wished to make partition of their property, his award was held invalid because he did not direct deeds of conveyance to be executed, to vest the allotments in the respective owners.

An arbitrator must decide the question submitted to him, and must not, instead of doing so, direct what appears to

him an equitable arrangement, apart from the question submitted. Thus, where on the sale of some land a question arose as to the sufficiency of the vendor's title, and the arbitrator decided that the purchaser should accept the title with all faults, receiving an indemnity, the award was held to be invalid, as it did not decide whether the title was good or bad.

An award should not leave the result conditional on the voluntary performance by one party of certain acts, but an award may impose an alternative course. Thus, where the question related to a right of way, an award of a certain sum if the right were allowed to remain, or of so much less if it were taken away, was held to be valid. Again, an award may direct a certain sum to be paid on a certain day, or a larger sum on some day more distant, and so on, thus imposing a kind of cumulative penalty.

Another reason for the greatest care and clearness in drawing up an award, is that it will be set aside if there be any uncertainty as to its meaning, and the arbitrator must therefore be careful so to word his award that no doubt can possibly arise as to time, place, or person. Thus an arbitrator should not only state the sum he considers due from one party to another, but should direct payment of that sum. If he do not, non-payment is not disobedience to the award, and cannot be compelled. It is probable, however, that Chancery would enforce payment, and, at any rate, it would be open to the aggrieved party to bring his action. It is optional with an arbitrator, in the absence of any express direction, to fix a time and place for payment; and if he do so, the fact of the day named falling on a Sunday forms no objection to the award. In dealing with property, also, an arbitrator must remember that he must distinctly specify in what manner, and by what documents or instruments, a conveyance or lease is to be made, and must provide for the execution of them, and also state at whose expense they are to be prepared.

According to the old law, an award which was bad in part was void altogether. This, however, is not the case at the present time, provided the bad part is clearly separable from the rest of the award; in which case the award will be void only as regards that part, and will hold good as to the remainder. Thus, supposing an arbitrator directs certain things to be done which are beyond his authority to order, his award will be invalid as to those directions, but, if there be no other fault, will stand on all other points. Or if he, being called upon to decide merely what sum is due from A. to B. for dilapidations, deal also with the question of the costs of the reference, and state in his award by whom they are to be paid, his directions as to the costs will have no value, while his award as to the amount of compensation will be binding. Where, however, from the construction of the award, the good and bad parts are inseparable, the presence of a defect must be, *ex naturâ rei*, fatal to the whole.

For an arbitrator to employ, to assist him in making his award, an attorney who has acted for one of the parties, is highly improper, but not, *per se*, a ground upon which the award would be set aside.

The following Table will, I think, be found useful:

TABLE VI.

Matters which will invalidate an Award.

Arbitrator having secret interest.
Arbitrator displaying strong bias.
Arbitrator taking money from one party before award made.
Arbitrator buying up claims of a party.
Arbitrator receiving private communications from one side.
Exclusion of persons from reference without sufficient justification.
Refusal to hear any evidence.
Refusal to hear one side.
Refusal to allow reasonable time for production of evidence.
Omission to decide on *all* matters submitted.
Surrender by arbitrator of his own opinion to that of another person.

Disobedience to any special directions in submission as to making of award.

Failure of wording of award to convey a *decision*, leaving no matters in doubt.

Failure in giving necessary directions to carry award into effect.

Failure of award to decide the precise question submitted.

Leaving execution of award *conditional*.

Having any part void which is inseparable from remainder.

Where there is more than one Arbitrator.

Non-execution by all together.

Non-appointment of third arbitrator or umpire before proceeding with reference, where so required by submission.

The authority of an arbitrator is absolutely and completely ended by the making of an award. So entirely is this the case, that, in order to show the importance of care in the drawing up of an award, I may mention he may not even correct a manifest error in a calculation, or make any alteration where the defendant's name has been, by mistake, substituted for the plaintiff's, in awarding payment of costs. The award will stand as originally written, and no fresh judgment or alteration will be of any effect. Even setting aside an award does not enable an arbitrator to make a fresh one, without a formal renewing of his authority by re-submission. In some cases, *by statute*, the making of an invalid award will not prevent the making of a second, and, under the Common Law Procedure Act, an award, or any part thereof, may be *referred back* to the arbitrator for his re-consideration, by the Court or a judge, upon such terms as to costs and otherwise, as the said Court or judge may think proper. This power is very commonly exercised on a motion to set an award aside on the ground of some defect.

By the 17 & 18 Vict., c. 125, s. 9, an award may be referred back "from time to time" — i. e. any number of times. In some cases the agreement of reference gives the Court the option of referring back the award to the same arbitrator, "or to such other person as the Court may think fit."

The duties of an arbitrator, when an award has been remitted to him for reconsideration, will be precisely the same as during the original reference. He will make a fresh award in the same manner as before; or it will be sufficient if the remitting of the award is occasioned merely by an error in the description of the parties, or some similar defect, for him to make a certificate that the award ought to be amended by substituting the right name for the wrong. Unless the order referring back the award state a time, the arbitrator's revived authority will, under the Common Law Procedure Act, be limited to three months from his re-entering on the reference, or being called upon to do so in writing by one of the parties. The time may, however, be enlarged by the Court or the parties.

I do not propose going into the various methods of enforcing an award, because this belongs of right to our legal friends, but may point out two modes of ensuring compliance with the arbitrator's decrees, which may be useful. One is by the parties consenting to a warrant of attorney to confess judgment for a specific sum, as collateral security for the performance of the award. The warrant contains a declaration that no execution shall issue until non-performance of the award, therefore there can be no objection to the form. The other suggestion applies only where property is in dispute, and it is to convey all the property to the arbitrator, who can then reconvey it to the parties in accordance with his award.

CHAPTER IX.

OF COSTS AND CHARGES — ARBITRATOR CANNOT SUE FOR REMUNERATION —USUAL METHOD OF SATISFYING ARBITRATOR'S CLAIM—ARBITRATOR'S POWER TO DETAIN DOCUMENTS UNTIL PAID — COSTS OF DRAWING UP AWARD BY ATTORNEY — REMEDY IF ARBITRATOR'S DEMAND EXORBITANT — WHEN COSTS OF AWARD SHOULD BE NAMED THEREIN — WHEN COSTS "ABIDE THE EVENT" — EFFECT OF ARBITRATOR IMPROPERLY DEALING WITH QUESTION OF COSTS — WHEN COSTS "IN DISCRETION OF ARBITRATOR WHO SHALL ASCERTAIN THE SAME" — FEES OF ARBITRATORS PART OF COSTS OF UMPIRAGE — COSTS OF THREE KINDS: OF THE CAUSE, OF THE REFERENCE, OF THE AWARD — DEFINITIONS — TAXING COSTS — PROVISIONS AS TO COSTS UNDER LANDS CLAUSES CONSOLIDATION ACT — UNDER RAILWAYS CLAUSES CONSOLIDATION ACT — UNDER COMPANIES CLAUSES CONSOLIDATION ACT.

COMING now to the important questions of costs and charges, the first point to note is that the duties of an arbitrator are not such as to entitle him to sue for his remuneration, unless in the event of his holding an express promise to pay. Even a clause in the submission that the costs of the reference and award, *including a reasonable compensation to the arbitrator, are to be in his discretion*, will not entitle him to sue on the submission, as he is not a party to it. The proper and usual course, and that now sanctioned by the Courts, therefore, is for the arbitrator, when giving notice to the parties that his award is ready for delivery, to notify them of the amount which he considers a proper remuneration for his services, so that the party who takes up the award may be prepared to pay that sum. If the party so paying be not the one upon whom the costs are thrown by the award, he may recover from his opponent, by attachment, if necessary, such costs as he (the opponent) is liable to bear.

The arbitrator may refuse to give up, until his charges are paid, the award and submission, and any memoranda or

valuations obtained by him for his guidance from other persons; but he must not detain documents put in before him as evidence. A lay arbitrator may charge, as part of the costs of his award, payments made to an attorney or barrister for drawing up the award. In cases where the arbitrator's own charges are very high, however, such payments would probably be disallowed by the Court. It would appear there is nothing to prevent an arbitrator refusing to give up his award except on payment of an exorbitant fee, but the party paying it has his remedy by action against the arbitrator for money had and received. The amount of the arbitrator's charges should not be named in the award, but in the letter of notification that the award is ready to be delivered. In cases, however, where the arbitrator is specially directed by the submission to ascertain the amount of the costs of the award, they should be stated therein. The power of the arbitrator over the costs of the reference and of the award will be regulated by the terms of the submission.

When the submission provides that the costs *shall abide the event*, the arbitrator has no control over them, and should make no mention of them in his award. His doing so will not, however, invalidate the *whole* of his award (as some surveyors have, within my knowledge, endeavoured to maintain), but the award will be void as regards the costs. Where the submission states that the costs are to be in the discretion of the arbitrator, "who shall ascertain the same," he must award costs, stating the amount, or his award will be endangered on the ground of omission to decide on *all* matters submitted.

When arbitrators have disagreed and an award is made by the umpire, he should charge the fees due to the arbitrators as part of the costs of the umpirage.

It must be noted that costs are of three kinds—of the *cause*, of the *reference*, and of the *award*; and it will depend upon the terms of the submission to what extent the arbi-

trator is able to direct, by whom, and in what manner, they shall respectively be borne; as he may be empowered to adjudicate upon the costs of the reference and award, but not those of the cause, and so forth.

Costs in the cause, of course, only exist where the reference arises out of an action at law, and comprise all expenses incurred up to the time of the submission, of the order of reference, of making same a rule of Court, and also of any proceedings in the cause *after* the award, if any such should be taken. Costs in the reference include all expenses incurred in the inquiry before the arbitrator, whether as to matters in the cause or out of it. Costs of the award are the arbitrator's charges which, as has been said, should be paid to him when the award is taken up. Thus, if the submission to reference of a cause, and all matters in difference, contain a clause giving the arbitrator power over costs, he may make one party pay, not merely the costs of the award and of the reference, but also of the action or suit which led to it. And, in dealing with the costs of the reference, he has power to state what costs shall be allowed to each witness, and to decide the costs of the briefs. These costs, if disputed, will have to be taxed in the same manner as if the matter had been tried in Court. Therefore, where an arbitrator does not wish to give either party an advantage over the other in the matter of costs, it is better to award that each shall pay his own costs of the reference, and half that of the award, rather than each shall pay half the costs of the reference and award, as thereby is saved the necessity of examining and contesting the costs incurred by each party in the reference, and those of the award.

It may be useful to note the provisions as to costs in certain Acts under which arbitrations largely arise.

Under the Lands Clauses Consolidation Act, 1845, in references of disputes as to compensation for lands taken, "all the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, should be borne by the pro-

moters of the undertaking, unless the arbitrators shall award the same, or a less sum than shall have been offered by the promoters, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions." The costs of the reference and award are to be taxed by the Master, if either party require it.

The Railways Clauses Consolidation Act, 1845, enacts that, except in cases where by that, or any special Act, it is otherwise provided, the costs shall be in the discretion of the arbitrators.

The Companies Clauses Consolidation Act, 1845, has a similar provision, with the addition of the words, "or their umpire, as the case may be."

CHAPTER X.

ADVICE TO PLAINTIFFS AND DEFENDANTS — GETTING UP CASE — ADVANTAGES OF ARBITRATION OVER TRIALS IN COURT — "SUPPLEMENTARY" AND "REBUTTING" EVIDENCE — SURPRISES — DISADVANTAGES OF ARBITRATIONS — ARBITRATOR AN UNCERTAIN JUDGE — MORE READY TO ADMIT IMPERFECT EVIDENCE THAN TO REFUSE GOOD — POSSIBLE DISCOURTESY — VALUE OF PLANS — EFFECT OF NUMEROUS WITNESSES — CASE FOR THE DEFENCE — ADVANTAGE OF HEARING PLAINTIFF'S CASE — VALUE OF "PLEADINGS" IN LAW SUIT — CONCLUSION — REVIEW OF CONTENTS.

I PROPOSE concluding these papers with a few remarks from the point of view of those engaged in the reference for the plaintiff or the defendant, as the case may be.

The great advantage to those engaged in getting up a case, which arbitrations possess over trials in Court, is, that there are more opportunities given to produce what may be called "supplementary," and sometimes "rebutting," evidence. In Court, everything must be ready to be laid before the judge and jury on the one occasion of trial, and if the best and strongest evidence be not then produced, there will be no opportunity for its production afterwards. In arbitrations this is not so. If your opponent at one hearing astonish you by the production of unexpected, or unexpectedly strong, evidence, you will have time before the next meeting to prepare yourself with equally strong evidence (if procurable) to counteract the first. There is, therefore, not the same probability of your case being overthrown by a "surprise," a catastrophe which by no means unfrequently occurs in cases tried in Court. This point has been dealt with at length in my previous book on 'Compensations.' On the other hand, there are of course certain disadvantages attending the settlement of disputes by arbitration that do not apply to trials in Court; and especially will it be found that the

arbitrator is an *uncertain* judge,—one day willing to admit anything, next day, perhaps, disposed to admit nothing, except on the most strictly legal, almost *extra* legal, proof. These remarks of course apply more to lay than to legal arbitrators, as, in the case of a barrister of standing, one would naturally expect, and would probably find, all the certainty and consistency characteristic of the occupants of that Bench which the arbitrator himself may be some day destined to adorn. But with inexperienced legal arbitrators, and with lay arbitrators, until such time as the increased practice in that office claimed for them in this volume renders them better qualified, it will be found that they are uncertain and inconsistent in their views as to evidence, and that they are now dictatorial, and anon weakly yielding. As a rule, perhaps, an arbitrator will be found more ready to admit what may be termed imperfect, or even bad, evidence, than to refuse that which is good; and, as has been pointed out, the powers of an arbitrator are really so imperial that, provided he does not actually commit any act for which his award may be set aside, he may behave with impunity in a most arbitrary manner; as, for instance, by insisting on the attendance of parties at meetings at times inconvenient to them. This, of course, is a line of conduct on the part of an arbitrator which is not often met with, as, to the credit of professional men of all denominations, it may be said that a man chosen to fill the responsible post of an arbitrator will almost invariably discharge his duties in a gentlemanly and courteous manner. It is my duty, however, to point out the possibilities.

In getting up your case for arbitration, it is wise to be quite as careful as if you were going before a jury. You may remember, however, if the reference is to a technical arbitrator, that *plans* will have comparatively little weight, as he will, in all probability, *view* the property, which will influence his mind much more than any drawings you can put before him, though they probably might affect the opinions of an unskilled arbitrator, or a common or special

jury—the latter, however *special*, having, strange to say, no *special* knowledge. In the same way, though *numbers* of witnesses may have an effect on the minds of a jury, they would have comparatively little on that of a technical arbitrator, who probably knows well the relative professional status of most of the witnesses called, as well as their peculiar views, and judges of their evidence accordingly. A few *good* men, judiciously selected, are better, in such a case, than a number of witnesses of little or no standing. You must, however, be to some extent guided by the tactics of your opponent, as it is hardly fair to your arbitrator to place him in the position of having to decide against the apparent weight of evidence. It will be wise, therefore, to ascertain, as far as possible, what evidence the other side intend to bring, and if they have many witnesses, to secure such a "team" as will relieve the arbitrator from the difficulty indicated.

If you are acting for the defendant, arbitration gives you the inestimable advantage that you may almost wait to hear what your opponent's case is before you prepare your own at all. This is, perhaps, scarcely handsome, and I do not advise it, especially as such a course would lead to difficulty, and perhaps disaster; if, for instance, the arbitrator appoint consecutive days for the hearing. Still, the advantage remains, and may fairly be used to the extent of enabling you to obtain further evidence which, perhaps, until you have heard the plaintiff's case, you would not have thought of. A disadvantage the defendant labours under in arbitration, which the *pleadings* to a great extent remove in a lawsuit, is that, until the proceedings actually commence, he has no means of knowing how the other side intend to shape their course; but, as has been above pointed out, the extra time for preparation of evidence given by arbitration is more than an equivalent for this drawback.

* * * * *

I trust that I may now, without presumption, claim to have given my readers no inconsiderable insight into the practice

of arbitrations, and the principles which should guide an arbitrator. I have shown them what may be referred, and who may refer, and also the methods in which cases for reference may arise. I have explained who may be an arbitrator, and discussed the qualifications which an aspirant to that office should possess. I have dealt fully with the questions of what an arbitrator may and may not do, not only as to enlargement of time, but on, I believe, *every point* in which he can be in doubt or difficulty. I have shown the various methods in which submission to arbitration may be made, and the way in which the necessary documents are affected by the Stamp laws; I have given a usual form of submission, and explained at length what is meant by a reference on the "usual terms." The power of revocation by the parties has also been reviewed. Passing then to the reference itself, I have given many hints as to evidence which I think cannot fail to be valuable, and remarked upon the rules governing examination and cross-examination, and the administration of oaths. The arbitrator's powers and duties as to the admission and rejection of evidence, in allowing time, in closing the reference, in proceeding *ex parte*, in amending the record, and taking skilled opinions, are fully dealt with. The offices of joint arbitrators and of umpire, as distinguished from that of single arbitrator, have then engaged our attention; and the method in which the award should be drawn up, and what defects will be sufficient to render it of no effect, and are therefore principally to be guarded against, are fully set forth. I have, lastly, dealt with the question of costs, both as regards the arbitrator's own personal charges and his power of adjudicating on the matter of costs as between the parties; and with a few remarks on the system of arbitration as bearing on the position respectively of plaintiff and defendant, have brought to a close a volume which, I trust, while affording to the young practitioner, in a practical form, information not elsewhere to be met with, will not be without value and interest even to those of more advanced experience.

APPENDIX.

INDEX TO APPENDIX.

APPENDIX.

FORM I.

SUBMISSION BY AGREEMENT.

(See page 9.)

FORM II.

SUBMISSION BY BOND.

Know all men by these presents that I, A. B., of , am held and firmly bound to C. D., of , in the sum of £ of good and lawful money of Great Britain, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the day of , in the year of our Lord .

Whereas disputes and differences have arisen and are still subsisting between the said A. B. and C. D. as to (*here state the matter in dispute*), and it is agreed by and between the said A. B. and C. D. to refer the same to E. F., of , and G. H., of , with liberty to them to choose and appoint an umpire. Now the condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, do and shall, on his and their part and behalf, in all things well and truly stand to, obey, abide by, observe, perform, fulfil, and keep, the award, order, arbitrament, final end, and determination of the said arbitrators respecting the matters referred; so as the said arbitrators make and publish their award in writing of and concerning the same ready to be delivered to the parties, or if they or either of them shall

be dead before the making of their award, to their respective personal representatives who shall require the same, on or before the day of , or on or before any other day not later than the day of , to which the said arbitrators shall by any writing signed by them endorsed on these presents, enlarge the time for making their said award; and in case the said arbitrators shall not make an award of and concerning the premises within the time limited as aforesaid, then if the said A. B., his heirs, executors, and administrators do and shall upon his and their part and behalf in all things well and truly stand to, obey, abide by, observe, perform, fulfil, and keep the award, order, arbitrament, umpirage, final end, and determination of the person so by the said arbitrators to be chosen and appointed as umpire as aforesaid, so as the said umpire do make and publish his award or umpirage in writing (*continue as in Form of Submission, Clauses* 4, 5, *and* 6, *adapting them to the case of an umpire*), then this obligation to be void, otherwise to remain in full force: And the said A. B. and C. D. do hereby consent and agree that this submission shall be made a rule of the Court of Queen's Bench at the instance of either of the said parties, their executors, or administrators: And it is further agreed by and between the said A. B. and C. D. that (*here add such of the clauses and provisions given in the Form of the Submission as are applicable*).

Signed, sealed, and delivered in the presence of A. B. (L. S.)

(*C. D. should execute to A. B. a similar bond with a similar condition.*)

FORM III.

SUBMISSION BY DEED.

This Indenture, made between A. B., of , and C. D., of , of the first part; E. F., of , of the second part; and G. H., of , of the third part:

Whereas differences have arisen and are depending between the said A. B. and C. D. and the said E. F., and also between

the said A. B. and the said E. F., and also between the said E. F. and the said G. H., touching and concerning (*here state the matters*); and in order to put an end to the said differences the said parties have agreed to refer the same (*or* "all matters in difference") to the award of X. Y., of

Now this Indenture witnesses that they, the said A. B., C. D., E. F., and G. H., do and each of them doth, each for himself severally and respectively and for his several and respective heirs, executors, and administrators, covenant and agree with each other, his heirs, executors, and administrators respectively, to stand to, abide by, observe, and perform the award and determination of the said X. Y. of and concerning the premises aforesaid; so as the above-mentioned arbitrator (*continue as in Form of Submission, Clauses* 4, 5, *and* 6): And the said parties do hereby further agree that (*add Clause* 8 *of Form of Submission, and any other clauses considered advisable*). In witness whereof the said parties hereto set their hands and seals, the day of , in the year of our Lord

Signed, sealed, and delivered by the said , in the presence of .

A. B. (L. S.)
C. D. (L. S.)
E. F. (L. S.)
G. H. (L. S.)

FORM IV.

SUBMISSION BY JUDGE'S ORDER.

A. B. v. C. D. } Upon hearing the attorneys or agents on both sides, and by their consent, I order that this cause ("and all other matters in difference between the parties") be referred to the award, order, arbitrament, final end, and determination of X. Y., of ; so as he shall make and publish his award in writing of and concerning the premises ready to be delivered to the said parties, or to either of them; or if they or either of them shall be dead before the making of the said award, to their respective personal representatives who shall require the same; on or before the day of now next ensuing, or on or before any other

day to which the said arbitrator shall by any writing under his hand, to be endorsed hereon, from time to time enlarge the time for making the said award: And, by the like consent, I further order, that the death of either of the said parties shall not act as a revocation of the authority of the said arbitrator; and that the costs of this action and of such reference (save and except the charges of the arbitrator and for the award) shall abide the event of the award, and that the costs and charges of the arbitration and for the award shall be in the discretion of the arbitrator: And, by the like consent, I order that the said parties, if examined, together with their respective witnesses, shall be sworn or affirmed before the said arbitrator, and examined upon oath or affirmation; and that the said parties shall produce before the said arbitrator all books, deeds, papers, and writings, relating to the matters in difference between them, as the said arbitrator shall require: And I do likewise order, by and with the like consent, that the said parties shall on their respective parts in all things stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, final end, and determination of the said arbitrator to be made and published as aforesaid; and that neither of the said parties shall bring or prosecute any writ of error, or any action, or suit at law, or in equity, against the said arbitrator, or against each other respectively concerning the matters referred by this order; and if either party shall, by affected dèlay or otherwise, wilfully prevent the said arbitrator from proceeding in the reference, or from making his award, he shall pay such costs as to the Court of Queen's Bench shall appear just and reasonable: And by the like consent, I do lastly order that this order shall and may be made a rule of the said Court, if the same Court shall so please. (*These are the common provisions in such an order, but they may be varied as the parties please. It may be advisable to add the clause for referring matters back. See Form of Submission, Clause* 16.)

Signature of the Judge.

Dated this day of 187 .

FORM V.

DEMAND FOR ARBITRATION WHERE LANDS TAKEN UNDER LANDS CLAUSES CONSOLIDATION ACT.

Whereas I, A. B., of , received notice in writing from the Railway Company (*or the promoters of the public undertaking, naming them by their proper title*), that they required for the purposes of their railway (*or other public work*) the lands and tenements specified in the said notice, comprising the lands and tenements specified in the under-written schedule, and that they were willing to treat for the purchase of the same, and that they intended to take the same, pursuant to the powers given them by certain Acts of Parliament: And whereas the said Company (*or the promoters*) have offered me the sum of £ , and no more, as the purchase-money and compensation for my interest in the lands and tenements so intended to be taken, and for the damage that may be sustained by me by reason of the execution of the works connected with the said railway (*or other public work*): And whereas I am not satisfied with that amount, and do not agree to receive and accept the same as sufficient compensation, and a dispute has arisen between me and the said Railway Company (*or the promoters*) respecting the same (*if no sum have been offered by the promoters, leave out the above paragraphs and say*: "And whereas a dispute has arisen between me and the said Railway Company (*or the promoters*) respecting the amount of purchase-money and compensation to be paid me for my interest in the said lands and tenements, and for the damage that will be sustained by me by reason of the execution of the works connected with the said Railway," *or other undertaking*): And whereas the said Company (*or promoters*) have not yet issued their warrant to the Sheriff to summon a jury in respect of such lands: I hereby state that I am interested in the lands and tenements set out and described in the first division of the said schedule, as tenant in fee simple; and in the lands and tenements set out and described in the second

division of the said schedule as tenant for years of the same, under a lease from H. K., of for years from , 18 : And I claim in respect of such my interest in the said lands and tenements the sum of £ (*a sum exceeding fifty pounds*) as purchase-money and compensation; regard being to be had not only to the value of the lands and tenements so intended to be taken, but also to the damage which I shall sustain by reason of the severing of the lands and tenements intended to be taken from my other lands and tenements, or otherwise injuriously affecting such other lands and tenements by the exercise of the powers of the Acts above referred to, or of any Acts incorporated therewith: And I hereby give notice to the said Company (*or promoters*), that I desire to have the amount of such compensation settled by arbitration, pursuant to the provisions of the Lands Clauses Consolidation Act, 1845 (*): And I request the said Company (*or promoters*) to concur with me in the appointment of a single arbitrator; and failing such concurrence, to nominate and appoint an arbitrator on their part, to whom, together with an arbitrator to be appointed and nominated by me, the dispute respecting the amount of such compensation shall be referred. (*Instead of the concluding words of this Form, after the mark* (*) *there often follows an appointment of an arbitrator by the landowner. It may be in these words*): "And I do hereby appoint X. Y., of to be the arbitrator on my part to settle and determine the amount of the purchase-money and compensation to be paid to me by the said Company (*or promoters*) in respect of my said interest in the aforesaid lands and tenements so intended to be taken, and I request the said Company (*or promoters*) to nominate and appoint an arbitrator on their part."

Dated the day of , A.D. .

A. B.

To the Railway Company (*or the promoters of, &c., as the case may be*).

SCHEDULE.

(*Here specifically describe the lands.*)

FORM VI.

DEMAND FOR ARBITRATION WHERE PREMISES INJURED.

Whereas I, A. B., am the owner in fee of a certain messuage and premises, called , with the appurtenances, for the residue yet unexpired of a term of years from (*or otherwise describe the particular premises, and the interest of the party*), situate at , in the parish of , in the county of : And whereas my said lands and premises have been injuriously affected by the execution of the works of the (*here state the name of the railway, or other public undertaking*), in the manner following, that is to say (*here state the nature of the injury*): And whereas I am entitled to compensation in respect of such injury: And whereas you, the (*railway company or promoters*) have not made me satisfaction for the same: I hereby give you notice, that I claim the sum of £ (*a sum exceeding* £50), as compensation for the aforesaid injury; and that unless within twenty-one days after the receipt of this notice you pay the said amount or enter into a written agreement to pay the same, I desire to have the amount of such compensation settled by arbitration, (*) and request you to concur with me in the appointment of a single arbitrator, or to appoint an arbitrator on your part, to whom, together with an arbitrator to be appointed by me, the question as to such compensation shall be referred. (*If the party appoint an arbitrator at once, he may, instead of the concluding words after the star* (*), *insert the appointment, as in the last Form.*)

Dated the day of , A.D. .

To the (*Railway Company, or other promoters*).

FORM VII.

APPOINTMENT OF ARBITRATOR UNDER THE LANDS CLAUSES CONSOLIDATION ACT.

Whereas under the provision of the (*here name the Act of Parliament*), the Railway Company (*or other promoters*) are entitled to take, and have given due notice in writing to A. B., of , in the county of , that they require for the purpose of the railway (*or other undertaking*) part of certain land and tenements, situate in the parish of , in the county of , in which the said A. B. is interested as (*state the interest*): which said lands and tenements are specifically described in the said notice and also in the underwritten (*or* "annexed") schedule: And whereas the said Company (*or promoters*) have offered to the said A. B. the sum of £ , as compensation in respect of the said land and tenements: And whereas the said A. B. is not satisfied therewith, and has required that the amount of such compensation should be determined by arbitration: Now these presents witness that the said Railway Company (*or*, "said A. B."), pursuant to the provision of the said recited Acts, and of the Lands Clauses Consolidation Act, 1845, and of the other Acts incorporated with the said recited Acts, do hereby appoint C. D., of , to be an arbitrator to settle and determine the amount of purchase-money and compensation to be paid by the said Railway Company to the said A. B. in respect of his interest in the said land and tenements so intended to be taken as aforesaid, and for the damage that may be sustained by him by reason of the execution of the works of the said railway; regard being had by the said arbitrator not only to the value of the lands and tenements so intended to be taken, but also to the damage, if any, to be sustained by the said A. B. by reason of the severing of the land and tenements so intended to be taken from the other lands and tenements of the said

A. B., or otherwise injuriously affecting such other lands and tenements by the exercise of the powers, if any, of the said Acts.

Dated this day of A.D. .

(*Signed by the Directors or Secretary of the Company, or undertaking.*)

(*Or, when the appointment is by the Landowner,*)

A. B.

SCHEDULE.

(*Here specifically describe the premises to be taken.*)

FORM VIII.

APPOINTMENT OF SINGLE ARBITRATOR TO ACT FOR BOTH PARTIES, COMPANY REFUSING TO APPOINT AN ARBITRATOR.

Whereas the Railway Company (*or other promoters, as the case may be*) lately gave me notice in writing that they required to take for the purposes of their railway (*or other undertaking, following the terms of the notice*) certain lands and tenements specified in the said notice, and in the underwritten schedule:

And whereas a dispute arose between me and the said Railway Company (*or the promoters*) respecting the amount of purchase-money and compensation to be paid to me by them for my interest as (*state the interest, as in the previous Forms*) in the said lands and tenements, and for the damage that might be sustained by me by reason of the execution of the works of the said railway (*or other undertaking*); regard being to be had, not only to the lands and tenements so intended to be taken, but also to the damage, if any, to be sustained by me by reason of the severing of the lands and tenements so intended to be taken from my other lands and tenements, or otherwise injuriously affecting such other lands and tenements by the exercise of the powers given them by the Lands Clauses Consolidation Act, 1845, or by their special Act, or by any Act incorporated therewith:

And whereas, before they issued their warrant to the Sheriff to summon a jury in respect of such lands and tenements, I served them with a notice in writing, signifying my desire to have the amount of such compensation settled by arbitration, and stated in such notice the interest in respect of which I claimed compensation, and the amount of compensation which I claimed, and requested them by such notice to appoint an arbitrator to determine such dispute, and stated in such notice the matter required to be referred to arbitration: And whereas I appointed X. Y., of , to be an arbitrator to determine such dispute, and notified such appointment to the said Company (*or promoters*): And whereas the space of fourteen days has elapsed since the said dispute arose, and since the service of the aforesaid request in writing, and since the appointment by me of such arbitrator, and the notification thereof to the Company (*or promoters*); and the said Company (*or promoters*) have failed to appoint an arbitrator: I now hereby, in pursuance of the provisions of the Lands Clauses Consolidation Act, 1845, and of the Acts above referred to, appoint the said X. Y. to act on behalf both of me and of the said Company, in hearing and determining the said dispute.

Dated the day of , A.D. .

A. B.

SCHEDULE.

(*Here specify the lands, as in the original appointment of the arbitrator.*)

FORM IX.

APPOINTMENT OF ARBITRATOR BY PARTY DISSATISFIED WITH COMPANY'S VALUATION.

Whereas the Railway Company (*or the promoters of other public undertaking*), in consequence of my absence from the kingdom (*or* "in consequence of my not having been found by them"), procured a valuation to be made under the Lands Clauses Consolidation Act, 1845, of the

compensation to be paid in respect of my estimated interest in the lands and premises described in the under-written schedule; and have deposited the amount of such valuation, being the sum of £ , in the Bank of England, pursuant to the provisions of the above statute: And whereas I am dissatisfied with such valuation, and have given the said Railway Company (*or promoters*) due notice in writing, requiring that the question of such compensation shall be submitted to arbitration, and calling upon them to appoint an arbitrator: I hereby appoint X. Y., of , an arbitrator, to determine whether the said sum so deposited as aforesaid by the said Railway Company (*or other promoters*) was a sufficient sum; or whether any and what further sum ought to be paid or deposited by them.

Dated the day of , A.D. .

A. B.

FORM X.

APPOINTMENT OF AN UMPIRE BY ARBITRATORS.

Pursuant to the powers given to us by an agreement of reference, made on the day of , A.D. (*or*, "by the agreement of reference contained in the condition of two mutual bonds, made and executed on the day of , A.D. , by A. B., of , and C. D., of , respectively each to the other;" *or* "by an order of Nisi Prius, made on the day of , A.D. , in a cause in which A. B. was plaintiff, and C. D. defendant"), we the thereby-appointed arbitrators (*) do by these presents nominate and appoint X. Y., of , to be the umpire according to the provisions of the above-mentioned agreement of reference (*or* "bonds of submission," *or* "order of Nisi Prius"), provided he be willing to accept such office. As witness our hands this day of , A.D. .

E. F.
G. H.

Witness,

FORM XI.

APPOINTMENT OF THIRD ARBITRATOR.

(*Commence as in last Form, from* *) do by this memorandum in writing, under our hands, made before we have entered upon the consideration of the matters referred, nominate and appoint X. Y., of , to be the third arbitrator to act with us in the consideration and determination of the same, according to the provisions of the above-mentioned (*or* "within-contained") agreement of reference (*or* "bonds of submission," *or* "order of Nisi Prius"). As witness our hands the day of , A.D. .

E. F.
G. H.

Witness,

FORM XII.

NOTICE TO COMPANY OF APPOINTMENT OF ARBITRATOR BY CLAIMANT.

To the Company, and all others whom it may concern.

I, the undersigned A. B., of , in the county of , send greeting.

Whereas I, the said A. B., am the owner (*or* "occupier") of (*here state the property in respect of which the claim arises, and the nature of the claim*): And whereas I did, on the day of , in pursuance of the powers and provisions of the said Act, give you the said Company notice in writing that I, as such owner (*or* "occupier") as aforesaid, demanded as and for compensation for such the sum of £ , and I in such notice desired, in the event of you the said Company being unwilling to pay the said sum, and of you the said Company being unwilling to enter into a written agreement for that purpose, within twenty-one days after the receipt of the said notice by you the said Company, to have the amount of such compensation settled by arbitration, according to the provisions of

the Lands Clauses Consolidation Act, 1845: And whereas you the said Company have not paid the said amount of compensation so claimed by me as aforesaid, and have neglected to enter into any written agreement to pay the said amount of compensation, although more than twenty-one days have elapsed since the receipt of the said notice by you the said Company, and have not agreed with me in the appointment of a single arbitrator to settle the same: Now, therefore, know ye that I, the said A. B., for the purpose of causing all questions and disputes between me and you the said Company, respecting the said compensation so claimed by me as aforesaid, to be settled by arbitration, in pursuance of the said Act, and the provisions of the Lands Clauses Consolidation Act, 1845, and of the several other Acts incorporated with the said Act, do hereby, on my part and behalf, nominate and appoint C. D., of , n the county of , to be an arbitrator to settle and determine all the questions and disputes between you the said Company and me, respecting the said compensation so claimed by me as aforesaid, and to settle and determine the amount of such compensation to be paid by you the said Company to me, for (*here state the ground of claim, or continue*, "the damage I have sustained, and also the damage which I may sustain for or by reason of such injuries as aforesaid, or otherwise, by reason of the said works having been executed by you as aforesaid"), and to be an arbitrator, by me on my part hereby nominated and appointed to act in the business of the said arbitration, in all respects according to and in pursuance of the provisions of the said Acts, in, about, and for the settlement and determination of all questions, disputes, and matters respecting the premises aforesaid; and I hereby request you the said Company to nominate and appoint an arbitrator on your behalf, to act in respect of the compensation, damage, matters, and premises aforesaid.

Dated the day of , A.D. .

A. B.

FORM XIII.

APPOINTMENT FOR A MEETING.

A. B. v. C. D. } I appoint , the day of next, for proceeding in this reference, at the hour of o'clock, at (*here state the place of meeting*).

Dated

X. Y.,
Arbitrator.

To Mr. E. F., for A. B.;
and to Mr. G. H., for C. D.

FORM XIV.

NOTICE THAT ARBITRATOR WILL PROCEED EX PARTE.

A. B. v. C. D. } I appoint , the day of next, for proceeding in this reference, at the hour of o'clock, at (*here state the place of meeting*); and I give notice that if you, A. B. (*or* "if either party"), fail to attend, without having previously shown me good and sufficient cause for your absenting yourself (*or* "for his absenting himself"), I shall, at the request of C. D., if (*or* "of the party") present, go on with the reference *ex parte*.

Dated the day of , A.D. .

X. Y.,
Arbitrator.

To Mr. A. B.
(*or* "to Messrs. A. B. and C. D.").

FORM XV.

DEMAND BY ARBITRATOR FOR PRODUCTION OF DOCUMENTS.

In the matter of the arbitration between A. B., C. D., and E. F.

SIR,

In pursuance of the power given to me by the order of reference (*or other submission, as the case may be*), I require you to produce before me, on , the day of next, at the hour of o'clock, at (*here name*

the place of meeting), the following documents relating to the matters in this reference, that is to say (*here enumerate the books, deeds, papers, and writings demanded, specifying and describing each with a reasonable degree of particularity, as far as is practicable. It may often be advisable to add,* " and also all other books, deeds, papers, and writings, concerning the matters in difference referred to my decision ").

Dated

X. Y.,
Arbitrator.

To Mr. A. B.

(*A copy of this notice should be served personally, as in the case of a demand of performance of an award, whenever there is any doubt of the party's willingness to comply with it; for the Courts, it is presumed, would not enforce obedience by attachment, unless there were a personal service, with the requisite formalities.*)

FORM XVI.

REQUEST BY ARBITRATOR FOR A WRITTEN STATEMENT OF THE MATTERS IN DIFFERENCE.

GENTLEMEN,

In order that in forming my award I may not omit duly to estimate every matter which is deemed of importance, I request you respectively to furnish me with a statement in writing of the particular matters (other than those included in the cause referred) which you desire me to take into my consideration as matters in difference in this reference.

Dated .

Yours truly,

X. Y.,
Arbitrator.

To Mr. A. B. (*or* "to Mr. E. F. for Mr. A. B."),
and to Mr. C. D. (*or* "to Mr. G. H. for Mr. C. D.").

FORM XVII.

NOTICE BY ARBITRATORS TO UMPIRE OF FINAL DISAGREEMENT.

SIR,

We hereby give you notice that we cannot and shall not be able to agree in making an award, but have finally disagreed about the same, and that you are at liberty to proceed as umpire to consider and award upon the matters referred.

Dated .

E. F.,
G. H., } Arbitrators.

To Mr. X. Y., Umpire.

FORM XVIII.

ENLARGEMENT OF TIME BY ARBITRATOR.

I enlarge the time for making my award respecting the matters referred to me by the (*if the enlargement is endorsed on the submission, say,* "within order of reference," *or other submission; if it be written at the foot of the submission, say,* "above order of reference," *or other submission*), until the day of , A.D. .

Dated .

X. Y.,
Witness, O. P. Arbitrator.

FORM XIX.

REVOCATION OF SUBMISSION BY A PARTY.

Know all men by these presents, that I, A. B., of , have revoked, annulled, and made void, and by these presents do revoke, annul, and make void, all the power and authority which by a certain agreement of reference in writing, made the day of , A.D. , between me the said A. B. and C. D., of , were conferred upon X. Y., of , the arbitrator thereby appointed to award and

determine on certain matters in difference between me and the said C. D.; and I do hereby discharge and prohibit the said X. Y. from making any award, or from any further proceeding in the said arbitration.

As witness my hand (*if the submission be by bond or deed, say*, "hand and seal"), this day of , A.D. .

A. B. (*if by deed, L. S.*)

Witness O. P.

FORM XX.

NOTICE OF REVOCATION TO ARBITRATOR.

SIR,

I hereby give you notice that by a writing under my hand (*or* "hand and seal"), made on day of A. D. , I have revoked, annulled, and made void your authority as arbitrator; and I hereby discharge and prohibit you from further proceeding in the matters of the arbitration between me and C. D.

Dated .

To Mr. X. Y. A. B.

FORM XXI.

NOTICE TO PARTIES OF AWARD MADE.

GENTLEMEN,

I hereby give you notice that I have made and published my award in writing respecting the matters in difference between Mr. A. B. and Mr. C. D., referred to me, and that it lies at my chambers (*or other place specified*) ready to be delivered.

The charges amount to £ .

Your truly,

X. Y.,
Arbitrator.

To Mr. A. B. and Mr. E. F., for Mr. A. B.;
and to Mr. C. D. and Mr. G. H., for Mr. C. D.

FORM XXII.

AWARDS.

Commencement of an Award reciting Submission by Agreement or Deed.

Whereas by a certain agreement in writing (*or* "indenture"), bearing date the day of , A.D. , made between A. B., of , of the first part; and C. D., of , of the second part; reciting that (*here recite so much of the matters in difference as will explain and justify the subsequent directions of the award*), it was agreed that the same (*or* "that all matters in difference," *or otherwise according to the terms of the reference*) should be referred to the award and final determination of me, X. Y., of : And whereas it was further agreed that (*here set forth such of the several powers and provisions in the submission as warrant the following directions of the award*): Now I, the said arbitrator, having taken upon myself the burden of this reference, and having duly weighed and considered the several allegations of the said parties, and also the proofs, vouchers, and documents which have been given in evidence before me, do hereby make and publish my award in writing of and concerning the matters above referred to me, in manner following, that is to say: I award and adjudge, &c.

Commencement of an Award reciting a Submission by Bond.

To all to whom these presents shall come, we, U. V., of , and X. Y., of , send greeting.

Whereas A. B., of , did by his bond, bearing date the day of , A.D. , become bound to C. D., of , in the penal sum of £ : and the said C. D., by his bond, also bearing date the day and year aforesaid, became bound to the said A. B. in the like penal sum of £ , which bonds respectively recite that (*here set out so much of the recital in the bonds as suffice to show what*

is referred, and to explain the rest of the award): Under which bonds conditions were respectively written for making the same void, if the said A. B. and C. D. respectively, and their respective heirs, executors, and administrators, should observe, perform, and keep the award, which we the said arbitrators should make ("of and concerning the said matters referred," *or otherwise, according to the bonds*); so as we the said arbitrators should make and publish our award in writing, &c. (*as in Form II., altering the person and tense, as far as the commencement of the provision respecting the umpire*): Now we, the said arbitrators, &c.

Commencement of Award by Umpire.

(*Recite the submission as to the appointment of the arbitrators, and the provision for appointing an umpire, and such other parts as may be necessary, and proceed*): And whereas the said U. V. and X. Y. did by a writing under their hands, bearing date the day of , endorsed on the said order of reference (*or, as the case may be*), appoint me, A. Z., of , to be the umpire, pursuant to the said order: And whereas the said U. V. and X. Y. did not make any award of and concerning the premises before the day of (*the limit of the arbitrator's authority, or, where there is no limit, say*—"And whereas the said U. V. and X. Y. have not made any award concerning the matters referred, but have finally and altogether disagreed respecting the same"): Now I, the said A. Z., having taken upon myself the charge of this reference, and having heard, examined, and considered the allegations, witnesses, and evidence of both the said parties concerning the premises, do make this my umpirage in writing of and concerning the premises, in the manner following, that is to say: I award and adjudge, &c.

Clauses as to Costs.

I award and direct that the defendant do pay to the plaintiff the costs incurred by the plaintiff of and incidental to the reference and award (*when the arbitrator is to ascer-*

tain the amount, add the following words: "And I assess the amount of the said costs of the plaintiff at £ , and the costs of my award at £ "):

And I further award and direct that the plaintiff and defendant do each bear his own costs of the reference, and pay one half the costs of the award; and that if either party shall in the first instance pay the whole or more than half of the costs of the award, the other party shall repay him so much of the amount as shall exceed the half of the said costs:

I award and direct that one moiety of the costs of the reference and award be borne and paid by A. B., and the other moiety by C. D.

STATUTES BEARING ON THE QUESTION OF ARBITRATIONS.

Space will not allow, in a work of these dimensions, of copious extracts from Acts of Parliament, but it is hoped that the following table, naming the principal Acts which bear upon our subject, will be found useful as tending to facilitate reference:

An Act for determining differences by arbitration (9 & 10 Will. III. c. 15).

An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen, 1824 (5 Geo. IV. c. 96).

An Act to amend an Act of the 5th year of his Majesty King George IV. for consolidating and amending the laws relative to the arbitration of disputes between masters and workmen, 1837 (7 Will. IV. & 1 Vict. c. 67).

An Act for the further amendment of the law, and the better advancement of justice, 1833 (3 & 4 Will. IV. c. 42).

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of companies incorporated for carrying on undertakings of a public nature (known as the Companies Clauses Consolidation Act), 1845 (8 & 9 Vict. c. 16).

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the taking of lands for undertakings of a public nature (known as the Lands Clauses Consolidation Act), 1845 (8 & 9 Vict. c. 18).

An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the making of railways (known as the Railways Clauses Consolidation Act), 1845 (8 & 9 Vict. c. 20).

An Act for promoting the public health (known as the Public Health Act), 1848 (11 & 12 Vict. c. 63).

An Act to amend the procedure in Courts of General and Quarter Sessions of the Peace in England and Wales, and for the better advancement of justice in cases within the jurisdiction of those Courts, 1849 (12 & 13 Vict. c. 45).

An Act to amend and consolidate the laws relating to bankrupts, 1849 (12 & 13 Vict. c. 106).

An Act for the further amendment of the process, practice, and mode of pleading in and enlarging the jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham (known as the Common Law Procedure Act), 1854 (17 & 18 Vict. c. 125).

An Act to amend the laws relating to the construction of buildings in the metropolis and its neighbourhood (known as the Metropolitan Building Act), 1855 (18 & 19 Vict. c. 122).

An Act to amend the Public Health Act, 1848, and to make further provision for the local government of towns and populous districts (known as the Local Government Act), 1858 (21 & 22 Vict. c. 98).

An Act to enable railway companies to settle their differences with other companies by arbitration (known as the Railway Companies Arbitration Act), 1859 (22 & 23 Vict. c. 59).

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to railways (known as the Railways Clauses Act), 1863 (26 & 27 Vict. c 92).

The Lands Clauses Consolidation Act, 1869 (32 & 33 Vict. c. 18).

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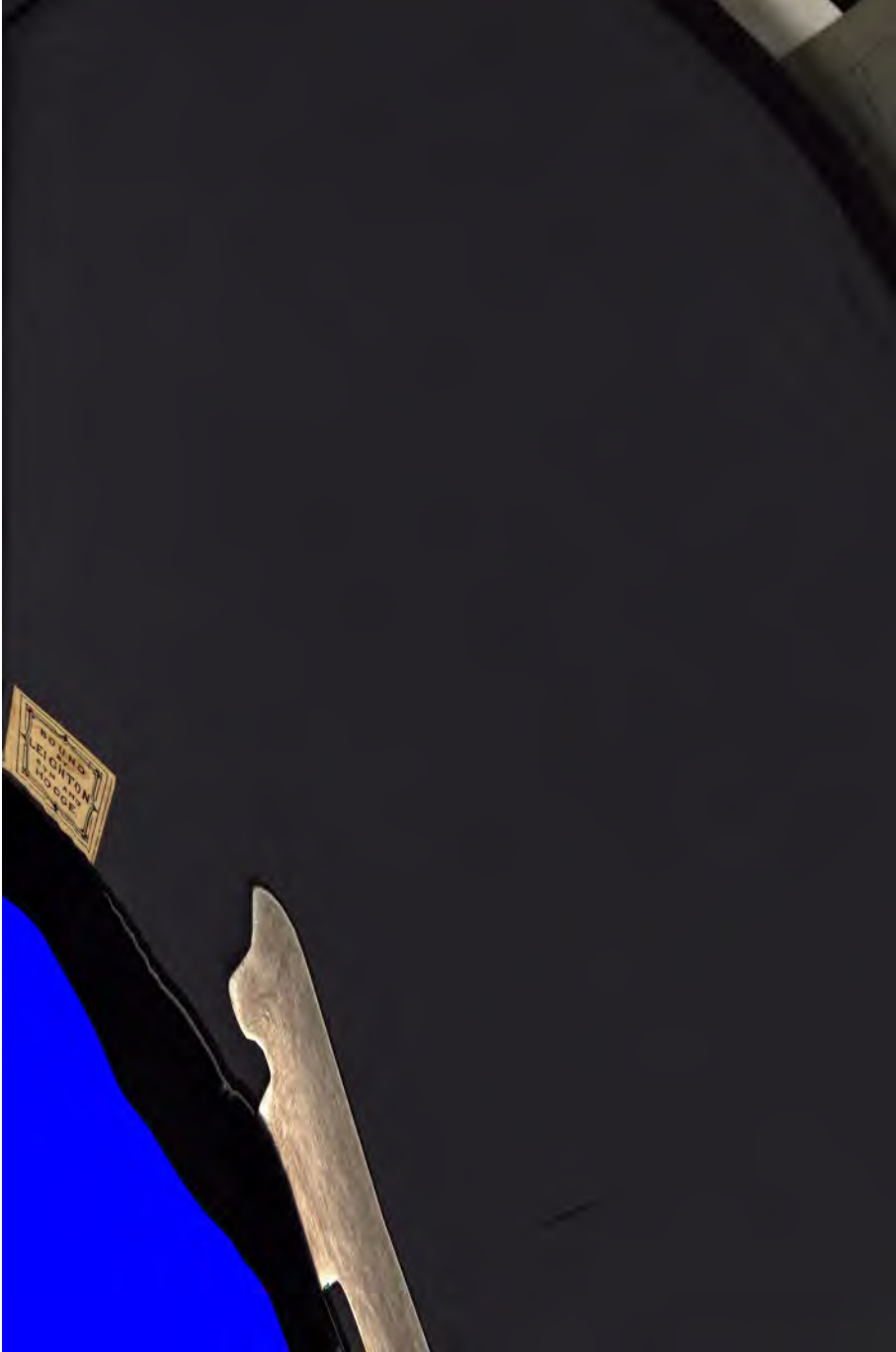
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